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**DEVELOPMENT OF THE CONTROL SYSTEM
IN THE HUNGARIAN FINANCIAL LAW**



INTRODUCTION

SYNOPSIS: Introduction. I. *Administrative Control:* A) Organic administrative control (1. external organic control, 2. internal organic control), B) Functional administrative control (1. popularis actio, 2. remedies), II. *Judicial Review:* A) Financial Jurisdiction of the Administrative High Court, B) Financial Jurisdiction of the ordinary Courts of Justice (1. financial criminal jurisdiction, 2. financial civil jurisdiction), III. *Constitutional Control of Financial Law.*¹

¹ Works of reference cited below are as follows: *Adamovich, L.:* Handbuch des österreichischen Verfassungsrechts. Wien.⁵ (Hgg. v. H. Spanner), 1957. *Beck S.:* Államigazgatás és igazságszolgáltatás (Administration and jurisdiction). (13 Új évf. Jogtudományi Közlöny, No. 1—2.) Budapest, 1958. *Beér J.:* Az államigazgatási aktusok bírói felülvizsgálatának államjogi és államigazgatási-jogi problémái (Problems of public and administrative laws of Judicial Review). (13. Új évf. Jogtudományi Közlöny, No. 1—2.) Budapest, 1958. *Carrow, N. M.:* Types of Judicial Relief from Administrative Action. (58 Columbia Law Review, No. 1.) New York, 1958. *Dicey, A. V.:* Introduction to the Study of the Law of the Constitution. Oxford, 1885 (Hungarian transl. by J. Tarnai: Bevezetés az angol alkotmányjogba. Budapest, 1902). *Eötvös J.:* A XIX. század uralkodó eszméinek befolyása az álladalomra (Influence of leading ideas of the 19th century to the State), 1854. (Összes munkái, XIII—XIV. köt. Budapest,⁴ 1902). *Ferrero, G.:* Reconstruction. Talleyrand à Vienne (1814—15). Paris, 1940., *Pouvoir. Les Génies invisibles de la Cité.* New York, 1942. *Mrs. J. Ferroné:* Az államigazgatási határozatok megtámadása a bíróság előtt (Judicial Review of Administrative Actions). (4 Magyar Jog, No. 6). Budapest, 1957. *Jaffe, L. L.:* The Right to Judicial Review. (71 Harvard Law Review, No. 5). Cambridge, Mass., 1958. *Jaffe-Henderson:* Judicial Review and the Rule of Law: Historical Origins (72 Law Quarterly Review). London, 1956. *Kiss E.:* A vállalati belső ellenőrzésről (Internal Control of Enterprises). (2 Pénzügy és Számvitel, No. 10). Budapest, 1958. *Korbuly I.:* Magyarország közjoga, illetve a magyar államjog rendszere (Constitutional Law of Hungary, resp. a System of Hungarian State Law), 1871. Budapest,⁴ 1884. *Langrod, G.:* Contrôle judiciaire de l'Administration américaine. (I Annales Universitatis Saraviensis, Droit-Économie, No. 2.) Saarbrücken, 1952; *The French Council of State: Its Role in the Formulation and Implementation of Administrative Law* (49 The American Political Science Review). Menasha, Wisc., 1955. *Letourneur, M.—Hamson, C.—J.:* The Control of Discretionary Executive Power in France (11 The Cambridge Law Journal, No. 2). London 1952. *Mártonffy K.:* A közigazgatási bíróság reformja (Reform of the Administrative High Court). (Jogászegyleti Szemle, No. 2). Budapest, 1947. *Martonyi J.:* Az adókövetési és beszedési eljárás új szabályozása (A new regulation of proceedings of imposing and collecting taxes). (2 Pénzügy és Számvitel, No. 2). Budapest, 1958; *A lakosságot terhelő adóztatási eljárás szabályozása* (Regulation of imposing taxes immediately on the population). (Acta Universitatis Szegediensis, Pol. & Jur. Tom. III, Fasc. 2). Szeged, 1958. *Marx—Engels:* Selected letters (in Hung. Budapest, Szikra, 1950). *Melichar, E.:* Öffentlicher Haushalt und Finanzsystem Österreichs. Handbuch der Finanzwissenschaft, Bd. III).² 1956. *Mommsen, Th.:* Römisches Staatsrecht. Leipzig,³ 1887—8. Bd. I—III. *Montesquieu:* Considérations sur les causes de la grandeur des Romains et de leur décadence, 1734. (Oeuvres compl.). Paris, 1838. *Névai L.:* Az államigazgatási per néhány alapkérdése (Some fundamental problems of the

The legal structure is one of the most effective uniting forces of Society, *G. Ferrero*² wrote of these forces that they were like silk threads keeping together the World with imperceptible bonds. But if these threads break they can be substituted only with chains of iron. To make this invisible and behind the scenes of History silently working structure lasting and effective: we need some guarantees. What is the value of light which is hidden or that of law which is unlawful? The danger of *summum ius summa iniuria* is an eternal problem both for legislators and practitioners of law.

*Montesquieu*³ mentioned the problem of the unlawful law among the causes of the decline of the Roman World Empire »Il n'y a point de plus cruelle tyrannie — he wrote — que celle que l'on exerce à l'ombre des lois, et avec les couleurs de la justice, lorsqu'on va pour ainsi dire noyer des malheureux sur la planche même sur laquelle ils s'étaient sauvés.« This central problem of control later engaged also the attention of the liberal theory of state. »As an idea the State does not differ from the collectivity of its members — wrote Joseph *Eötvös*⁴ — and state interests are the same as those of individuals. The State Will has to be directed always to the benefit of the collectivity. So — from a purely idealistic point of view — in a State where everybody has an influence on State Government there is any safeguard superfluous for the individual against state power. But from a practical point of view things are not like this...«

The true importance of control developed, however, not in the liberal but in the socialist state law. The liberal State presents but a faint silhouette of the concentration of force realized in the socialist State by uniting the power in the way of the democratic centralism. But the democracy of this centralism must be safeguarded to make this immense machine — not only impossible but also unimaginable in the Past — function well. Thus the significance of control has remained untouched and even grown in socialist States but the point of view of socialist jurists differs essentially from that of their liberal colleagues. In the liberal State this question is discussed, in principle, from the point of view of fundamental human rights. »As the exercise of power is to be transferred to the individuals or to the majority — wrote *Eötvös* in the above mentioned work — and as the legislative power and Government starting from the people itself the State Will is

administrative lawsuit). (13 Új évf. Jogtudományi Közlöny, No. 1—2). Budapest, 1958. *Peck, C. J.*: The Scope of Judicial Review of Administrative Action in Washington. (33 Washington Law Review and State Bar Journal, No. 1). Seattle, Wash., 1958. *Russell, B.*: Authority and the Individual. London, 1949. *Ruck, E.*: Schweizerisches Staatsrecht. Zürich.³ 1957. *Schaumann, W.*: Verordnungsrecht und parlamentarische Kontrolle im Kanton Zürich (179 Neue Zürcher Zeitung und Schweizerisches Handelsblatt, Fernausgabe Nr. 311). Zürich, 1958. *Szabó J.*: *Demokrácia és közjogi bíraskodás* (Democracy and jurisdiction of public law). Budapest, 1946; *A közigazgatási bíróság reformja* (Reform of the Administrative High Court). (Jogászegyleti Szemle, No. 2.). Budapest, 1947. *Tomcsányi M.*: Magyar közigazgatási és pénzügyi jog (Hungarian administrative and financial law.) Különös (Szakigazgatási) Rész. Budapest, 1933. *Török L.*: Törvény az állami ellenőrzés új rendszeréről (Act on the new System of State Supervision. (13 Új évf. Jogtudományi Közlöny, No. 6). Budapest, 1958.

² Ferrero: Reconstruction, 326, Pouvoir, 145.

³ Montesquieu 159.

⁴ Eötvös III, 211.

always the will of majority: It follows that the freedom of the individual always needs some guarantees against the unrestrained power of State, however it may be arranged; and the degree of personal freedom, enjoyed by the individual in a State, depends especially upon the existence and value of such guarantees.«

The Socialist State, however, regards the problem from the higher point of view of the community. The control is required not only by the security of individuals but also by the efficiency of State order. Without a control a socialist State could function not only not freely but not at all. This was seen very well by *Lenin*⁵ when he wrote as follows: »To control men and to control the real execution of affairs — this is now, once again and exclusively, the turning-point of our whole work, our whole policy.« To realize the true significance of this theorem of *Lenin* the legal theory of this country needed some time. *John Beér*⁶ writes about this: »In the beginning, we had had, as yet, no good grasp of the importance of the legality of administrative activity in socialist relations. We had expected too rapid results from other forms of social and state control in the field of safeguarding the socialist legality of administrative work.«

To-day, however, nobody more challenges the importance of socialist legality in the legal theory of this country. In the Hungarian financial law, e. g., there function at present three separate systems of control side by side: An administrative, a judicial and a constitutional control.

Certainly, it is a moot point whether the system of judicial procedure and that of legal remedies — including, in a wider sense, also the procedures of complaint and those of notification — may be inserted in this system of control. A second question is whether we should confront — instead of the above mentioned triple division — the control conducted *ex officio* with that held on initiative of citizens. This treatise does persist, all the same, in the grouping mentioned above because it considers the difference of branches of state powers more characteristic for the way of control than the participation of citizens in, or their absence from, this control. Maybe, the primary purpose of judicial procedure is not controlling; its effect, however, has doubtless also a controlling character. It establishes and enforces not only subjective rights and duties but it also guarantees the due process of administrative organization and, in the last resort, that of the whole legal order. And the control character of legal remedies can be found in calling attention of organs with jurisdiction to intervene. They render possible with this to exercise a control. The control is, therefore, not in resorting to a legal remedy but in passing a decision by reason of it. There is the authority which exercises the control; and the role of the individual in control is, in any way, a secondary one. It is, therefore, correct to start from the division of objective spheres of action and not from that of official and individual functions.

⁵ Lenin, I. V.: *Sotch. (Works, Russian)*, XXVIII, 129.

⁶ Beér 35. B. Russell 88 has written: »A healthy and progressive society requires both central control and individual and group initiative: without control there is anarchy, and without initiative there is stagnation.«

I. ADMINISTRATIVE CONTROL

The administrative control is either organic or functional. The former assures a control by organizing the machinery of financial law; the latter by increasing the guarantees of financial proceedings. The two administrative control systems subsist side by side and complete each other.

A) Organic Administrative Control

The organic control has two forms: An external and an internal one. The former makes an organ supervised by another one which is exterior — co-ordinated or superior — to the controlled organ, having either exclusively a control authority or also other functions; this control may be exercised by decentralised or centralised organs. The latter form of control creates internal special organs for controlling itself. It is obvious that the former method is more practicable, no organ being suitable for controlling itself. Also the notion and purpose of control requires more an external than an internal organ. We prefer, therefore, to develop more the former kind of control — although some have disagreed with this view.^{6a}

1. External Organic Control

1.

The decentralized organs of external organic control, in this country, were for a long time the *audit offices*. Their creation was ordered by the Act on the Court of Accounts,⁷ but it was drawn out by the Governments, seemingly being not very enthusiastic about being controlled, just as there was impeded for a long time also the creation of the Administrative High Court, set up with a mutilated organization at last. The audit offices were created by Act No. 1897:XX on audit of public moneys, after nearly two decades. The Act established audit offices beside the Cabinet Ministers⁸ and public authorities entrusted with managing state property and revenues or invested with the right of remittance.⁹ These offices were decentralized and stood nevertheless out of the framework of the supervised authorities, being subordinated to the Ministry or to the administering authority only concerning the auxiliary administrative service. They functioned, as regards the supervision of the preliminary and subsequent accountancies, independently and were responsible for these only to the Minister himself.¹⁰

The accountancy functions of the *Capital* were performed by the *Capital's Accountancy Department* under a chief auditor's guidance; its cashier's service

^{6a} Cf.: Kiss 371.

⁷ Art. 27 of Act No. 1870:XVIII.

⁸ The Prime Minister's audit office was later liquidated by Act No. 1908:LI.

⁹ Art. 85 of Act No. 1897:XX.

¹⁰ Art. 87 of Act No. 1897:XX.

was managed by the pay-office headed by a cashiers's director, both being subordinated to the Mayor.¹¹ These Capital offices were supervised by the *Capital's Court Accounts*¹² headed by a director subordinated immediately and exclusively to the Chief Burgomaster. These organs of the Capital, however, were liquidated by a decree,¹³ having binding force of law, decreeing on the Central State Control.

The *county accountancy* was exercised, in the beginning, by county civil servants, assuring, of course, no external control. Later, therefore, the county and district accountancy was discharged by audit offices co-ordinated to the county financial directorates, resp. by district comptrollers delegated by those.¹⁴ After World War I the county accountancy was carried out by county audit offices subordinated to the Minister of the Interior.¹⁵ The independency of all audit offices increased as later they remained subordinated to the competent Ministries, resp. authorities only as regards the auxiliary administrative service, in other respects becoming subordinated to the Ministry of Finance.¹⁶

The members of audit offices were rendered independent of the influence of the supervised authorities by precautions like to guarantees of judicial independence. So the head of the ministerial audit office was subordinated, as to his personal affairs, to the Minister immediately. The civil servants in audit offices were responsible for the accountancy service to the head of the audit office, resp. to the Minister.¹⁷ The other audit offices were headed by Chiefs. This presented proposals, as to personal affairs of the civil servants under his guidance, to the authority supervised by this office. The authority was, however, not authorized to decide in these affairs but it had to submit these, with a report, through the head of the ministerial audit office, to the Minister. In the affairs of the heads of audit offices the head of the ministerial audit office independently made his propositions to the Minister.¹⁸ Later the Minister of Finance decided in personal affairs of each audit office servant.¹⁹ At the Capital Court of Accounts also the incompetency in consequence of relation or profession was regulated.²⁰ The members of audit offices enjoyed special guarantees also on the field of disciplinary procedure. This was all the more important because the disciplinary law of Hungarian civil servants, with few exceptions, was excluded from the authority of ordinary and administrative Courts equally and was never regulated satisfactorily. Also the members of audit offices enjoyed no judicial protection but they had more guarantees than the most other civil servants. Thus the departmental investigation could be prescribed against the head

¹¹ Art. 51/1—2. of Act No. 1930:XVIII.

¹² Art. 51/3—6 of Act No. 1930:XVIII: »Székesfővárosi Számszék.«

¹³ Art. 24 of Decree of legal force No. 17/1949.

¹⁴ Art. 1—2 of Act No. 1902:III.

¹⁵ Art. 20, 27 of Departmental order of the Minister of Interior, No. 160 224/1924. BM; Art. 1—4 of Departmental order of the Minister of Interior No. 76 000/1929. BM.

¹⁶ Art. 1—2 of Act No. 1920:XXVIII.

¹⁷ Art. 88—9 of Act No. 1897:XX.

¹⁸ Art. 90 of Act No. 1897:XX.

¹⁹ Art. 3 of Act No. 1920:XXVIII.

²⁰ Art. 63/1—8 of Act No. 1930:XVIII.

of an audit office only by the Minister, against the civil servants of this office by the head of the office or by the Minister. Their disciplinary authorities were in the cases of members of the ministerial audit offices the disciplinary committee of the Ministry, in the cases of members of the other audit offices the supervised administrative authority, resp. the disciplinary committee of the county administrative council, and in second and last instance the Minister.²¹ After having been subordinated to the Minister of Finance their disciplinary forums became the disciplinary committee within this Ministry, and in second instance the Minister of Finance, two members, however, were delegated to the committee also by the competent Minister.²² For the head of the Capital's Court of Accounts and his deputy the general disciplinary rules were in force with the difference that a disciplinary action against them and their suspension could be prescribed only by the Minister of the Interior and their disciplinary forum was in the first and last instance the Disciplinary Court.²³ This privilege was extended later to their whole staff.²⁴

There fell within the competence of the audit offices the reporting, the auxiliary administrative service (legalization before assignation, auditing, compilation of registrations), checking of accounts before paying, book-keeping and examination of public accounts.²⁵ The authority was obliged to make them acquainted with the data necessary for performing their tasks. Before countersigning the assignments they looked after whether the expenses had a cover granted in the budget; whether they were not assigned repeatedly; whether their amounts filled the requirements of legal rules and prescriptions.²⁶ If the assignment was irregular, it contained expenses without provision or additional ones, the audit office had to call the attention of the Minister or that of the head of the administrative authority to this anomaly. If this insisted, nevertheless, on assigning, in the beginning it was a rule that the head of the audit office had to countersign also this assignment, with a remark, anyhow, „by order“.²⁷ Later the competent Minister was obliged to turn in such a case to the Minister of Finance for appropriate action.²⁸ The audit examined legality and authenticity of items equally.²⁹ So it was not purely formal but concerned also the merits of cases. The observations, made in the cause of the revision of accounts, were asserted against the civil servants who managed properties in the course of a so-called accountability action. The condemning or discharging order was issued by the head of the audit office. An appeal could be lodged to the Minister and from him one could plead to the ordinary Court of Justice, in forty-five days.³⁰

²¹ Art. 91—92 of Act No. 1897:XX.

²² Art. 4 of Act No. 1920:XXVIII.

²³ Art. 87/3 of Act No. 1929:XXX; Art. 67 of Act No. 1930:XVIII.

²⁴ Art. 17 of Act No. 1934:XII; Departmental orders of the Minister of the Interior Nos. 106.600/1936. BM; 106.601/1936. BM; 33.900/1939.. BM.

²⁵ Art. 5 of Act No. 1897:XX.

²⁶ Art. 96—97 of Act No. 1897:XX.

²⁷ Art. 98 of Act No. 1897:XX.

²⁸ Art. 8 of Act 1920:XXVIII.

²⁹ Art. 104 of Act No. 1897:XX.

³⁰ Art. 127—141 of Act No. 1897:XX.

In the beginning our new law extended the field of function of audit offices. New audit offices were organized also besides the Prime Minister, the Supreme Economic Council and the Central Planning Board.³¹ Also the decree reorganizing the audit offices, the whole national economy, and public accountancy maintained them,³² and even prohibited — for keeping up the independent organization of audit offices and making their control activity more successful — to assign the sections, groups or members of audit offices to ministerial sections, resp. to auxiliary administrative audit services or to oblige them to perform administrative functions, save with an exceptional order of the Minister after being proposed by the head of the audit office.³³ A later decree,³⁴ however, liquidated the audit offices. From this time on the task of organic administrative control has been taken over partly by central external organs, partly by new internal organs of the supervised authorities created for this purpose.

2.

The centralized organization of State supervision was not unknown even in the old Hungarian law. The stress, however, was on the decentralized organs held more effective. Central organs were, e. g., the general control organs in the framework of the Ministry of Finance like the Supervisory Authority of Private Insurance Companies,³⁵ the Supervisory Authority of Public Concerns,³⁶ or the Superintendence of Sheltered Estates.³⁷ These were organs of national competence but of a specialized sphere of action. The new control system had begun, before liquidating the audit offices, to create national control organs of general sphere of action, abolishing step by step the ancient organs.

An order organized the *Records Office of Audits of Public Interest*,³⁸ for centralized administration of data of audits concerning the inner management of enterprises. It stood under general supervision of the Prime Minister exercised through the Secretary General of the Supreme Economic Council. From this supervision there were, however, exempted — beside police and judicial inquiries — the most part of the examination material of the financial authorities, of the Hungarian National Bank, of the Central Corporation of Banking Companies, and of the Central Planning Board. The Records Office was created in the framework of the Central Corporation of Banking Companies, i. e. more for an economic, banking control than for a legal supervision. Its head and staff were appointed from the number of the employees of the Central Corporation, and dismissed, by the Secretary General of the Supreme

³¹ Order in Council No. 4048/1949. Korm.

³² Order in Council No. 13.000/1948. Korm.

³³ Art. 12 of Order in Council No. 13.000/1948. Korm.

³⁴ Decree of legal force No. 2/1950. tvr.

³⁵ Art. 1—2 of Act No. 1923:VIII.

³⁶ Order in Council No. 4600/1933. ME.

³⁷ Order in Council No. 4150/1934. ME.

³⁸ Order in Council No. 1620/1948. Korm., Enacting order No. 282/1948. GF:
»Közérdekű Vizsgálatok Nyilvántartója.«

Economic Council. Its procedure was confidential. Only persons exceptionally authorized could look into the informations and even they could not be acquainted with the names of the informers.³⁹ Its standing committee could transfer the administration of urgent cases to a Committee of Three consisting of the delegates of the Supreme Court of Accounts, of the Minister of Finance, and of the Secretary General of the Supreme Economic Council, with engagement of subsequent reporting.

Further orders⁴⁰ transferred the national supervision to the Minister of Finance. He had to enact these measures by means of the Records Office reorganized and denominated henceforward as *National Control Centre*.⁴¹ It was taken out of the organization of the Central Corporation of Banking Companies and its expenses were appropriated in the Prime Minister's budget under the side of expenses of the Supreme Economic Council. Later its competence became more ample containing also regular supervision of state enterprises and of those of national interest.⁴² It made investigations also in affairs connected with the execution of the Plan Act, in price problems, in reparation affairs and in those of foreign trade, in conformity with instructions of the departmental Ministers, resp. of the authorities. It held a general inquiry at every enterprise at least once a year, reporting to the competent Minister, to the Minister of Finance, to the Secretary General of the Supreme Economic Council, and to the Central Planning Board. If it did not agree with the interested authorities in some dispositions, then the affair was submitted to the Supreme Economic Council which used to inspect the plans and accounts of enterprises.

This control, conformed particularly to enterprises, was generalized by a further decree which reorganized its authority, denominated it *National Supervisory Centre*,⁴³ and liquidated, at the same time, the main control organs of the remote and recent Past: The Supreme Court of Accounts, the National Control Centre, and the Court of Accounts of the Capital.⁴⁴ Its supervision extended over the organs of state administration, including also the local organs of state power, over the state enterprises, and over some corporations and institutes of general interest. Not even the military organs, the Courts and public prosecutors were exempted — outside the range of judicature, resp. prosecution. The supervision could be extended also over private enterprises. Its purpose was generally to explore how the public institutions executed the orders of higher organs and how their management fulfilled the Plan. The Centre functioned under general supervision of the Council of Ministers exercised through the People's Economic Council. Its president and his deputies were appointed by the Presidium of the People's Republic on proposition of the President of the People's Economic Council with approval of the Council of Ministers. Its other employees were nominated by the President. Also their professional incompatibility was regulated. Its

³⁹ Art. 4 of Enacting order No. 282/1948. GF.

⁴⁰ Orders in Council Nos. 4870/1948. Korm., 7660/1948. Korm.

⁴¹ »Allami Ellenőrzési Központ.«

⁴² Order in Council No. 7410/1948. Korm.

⁴³ Decree of legal force No. 17/1949. tvr., Enacting instruction No. 393/1949. Mt. h.: »Allami Ellenőrző Központ.«

⁴⁴ Art. 7 of Decree of legal force No. 17/1949. tvr.

ordinary supervision extended to the whole functioning of the supervised organ, and its extraordinary supervision to some affairs or groups of affairs. It could not make arrangements immediately but it had to call the attention of the head of the supervised organ and that of the competent Minister to the troubles, and if these did not take measures, that of the People's Economic Council, and in the case of non-economic departments that of the Council of Ministers.

Act No. 1952:II reorganized the Centre again and placed it under immediate supervision of the Council of Ministers. Some affairs⁴⁵ were exempted from its control. Hereafter its President was appointed by the Presidium of the People's Republic on proposition of the Council of Ministers, and his deputies by the Council of Ministers. To significant enterprises, constructions, railways it could set out local accountants or supervisory groups. It had to make proposals to the Council of Ministers for putting end to the troubles. And it could oblige persons causing damages to pay a compensation.⁴⁶

Later the Centre was reorganized again by a further decree under the new name of a *Ministry of State Control*.⁴⁷ Its task was to take part with its supervisory activity in building the socialism, in raising the population's prosperity and their cultural supply, to control execution of the most seasonable tasks prescribed by the policy of Party and Government, to struggle for eliminating the faults, for a more effective protection of the social property, and against wastage, bureaucratism, and lack of discipline. It is evident that its tasks were principally not of legal but of economic nature: Control of efficacy of producing equipments, that of execution of legal orders to use the financial means and labour according to the Plan, to raise productivity, to introduce progressive technical and agricultural procedures and to ameliorate the quality of industrial products at the Ministries and other national organs, at the specialized administrative organs of the Council Executive Committees and at other national, co-operative and social organs and enterprises. It had also to control the protection of social property, registration of using up material and financial means, enforcing thrift in economy. It could give instructions to the head of the supervised organ, impose disciplinary punishment for irregularities and oblige to pay damages.⁴⁸ He placed out also local accountants.

The Ministry of State Control was also liquidated by a decree.⁴⁹ Its competence, however, was shortly transferred to a recent institution: the People's Control.⁵⁰ A *Central People's Control Commission*⁵¹ has been created under immediate Government supervision and subordinated to this Commission territorial (Capital, county, district, town, etc.) people's control commissions and bureaux. These are hierarchically subordinated to each other and perform

⁴⁵ Foreign Affairs, Affairs of the People's Army, State Security Authority, mass organizations.

⁴⁶ Order in Council No. 51/1952. MT.

⁴⁷ Decree of legal force No. 28/1955. tvr.: »Állami Ellenőrzés Minisztériuma.«

⁴⁸ Order in Council No. 48/1955. MT.

⁴⁹ Art. 1 of Decree of legal force No. 33/1956. tvr.

⁵⁰ Act No. 1957:VII; Enacting order No. 6/1958. Korm. Cf. Decree of U. S. S. R. No. 474/1957. (VIII. 23): Török 233.

⁵¹ »Központi Népi Ellenőrzési Bizottság.«

their functions with the help of the working people. They draw into their work also people's controllers. Their budget is appropriated under head of the Council of Ministers as an independent chapter. Their task is to consolidate the civil discipline, to protect people's property, to reveal corrupt practices, to struggle for detecting the hostile, corrupt and bureaucratic persons, to take part in reinforcing the people's democratic State. Their supervision can be complex (inquiry of a branch of the people's economy or of an important question on national level), general (extending to the whole functioning of an enterprise, institute, craftsman, etc.) or target control (inquiry of a definite personal behaviour or default). President and members of the Central People's Control Commission are appointed and recalled by the Presidium of the People's Republic, those of the territorial Commissions by the local Councils. To recalling of local Commission members also the approval of the Central People's Control Commission is indispensable. The territorial People's Control Commissions are supervised by the Central one and the latter by the Government. In urgent cases the Presidents take measures but they render account to their Commissions subsequently. The Central People's Control Committee may supervise every administrative organ, enterprise, association, co-operative, craftsman and merchant, save armed corporations, Courts and public prosecutors. Functioning of the territorial Commissions does not extend to procedure of Ministries and to that of organs of national competence and to proper activity of offices or enterprises under their leading. Also incompatibility of the Commission members has been regulated. They are not authorized to instruct the supervised organ but they may make propositions and summon its leader to redress irregularities. If he fails to take measures the Central People's Control Commission pleads to the competent Minister or to the Government for calling him to account. The Commission members enjoy special protection by police, criminal and labour law. The right of notice against them is restricted.

3.

The central supervising organization, functioning under several names, cannot substitute, however, alone the liquidated decentralized organs of control. It is, therefore, indispensable to utilize also the supervising activity of national organs which are created not exclusively and even not primarily for control purposes. The Act organizing the people's control⁵² provides expressively about this determining the relation of the organization of people's control with other state organs entitled to supervise. According to this Act the activity of people's control does not exempt the state, co-operative and social organisations from control duties prescribed for them.

Such a central organ is, first of all, the *Presidium of the People's Republic*.⁵³ This can exercise, in transferred competence, nearly the whole power of the legislative body when this is not in session.⁵⁴ And it has, in addition to this, also in own sphere of authority a wide possibility to exercise

⁵² Art. 18—19 of Act No. 1957:VII.

⁵³ »Népköztársaság Elnöki Tanácsa« = NET.

⁵⁴ Art. 20/4 of Act No. 1949:XX.

supervision. Thus its control power can be exercised, concerning financial law, by ratification of international treaties of economic content; by nullification, amendment or reversal of legal rules, decisions or dispositions of organs of administration or of the local organs of state power if these commit offence against the Constitution or interfere with interests of the working people; at last by dissolving the local organs of the state power for the same reasons.⁵⁵

Another organ, exercising also supervision, is the supreme organ of administration, the *Government of the Hungarian People's Republic*.⁵⁶ This directs the work of Ministries and other organs subordinated to it immediately and assures execution of laws, of decrees of Presidium having the binding force of law, and of plans of people's economy.⁵⁷ The Government may take measures not only immediately or by a member of its but it is authorized by the Constitution of the People's Republic⁵⁸ to place under its own supervision each branch of administration and to create special organs for this purpose which will not be subordinated to a departmental Ministry and can be used also for control. A number of these organs were of transitory character but some of them have continued in existence.

As such an organ was established the *National Economic Council*,⁵⁹ composed of delegates of democratic parties and economic organizations. A governmental organ even more significant was the *Supreme Economic Council*.⁶⁰ The Government transferred to this, for a time, its activity for assuring the normal course of economic life. Its President was the Prime Minister, its members were the Ministers of Industry and of Transport and later also the Ministers of Finance and of Food. Its secretariat was headed by a Secretary General appointed by the Council of Ministers. Its expenses were parts of the budget of Prime Minister. Besides its preparatory function it immediately made provisions for execution of orders and other legal rules issued by it. This function included a wide range of supervisory activities. It was entitled to penalise trespassing of its rules like misdemeanours. Its Secretary General later received important competence in affairs of price regulation, of fulfilling orders given by public bodies, of settlement and even of budget.⁶¹

After liquidation of the Supreme Economic Council its competence and that of its Secretary General were taken over by the Government, competent Ministers and other central organs (People's Economic Council, Central Planning Board).⁶² Hereupon the Government provided for the

⁵⁵ Art. 20/1—3 of Act No. 1949:XX.

⁵⁶ »Magyar Népköztársaság Kormánya.«

⁵⁷ Art. 25/1, 4 of Act No. 1949:XX.

⁵⁸ Art. 28/2 of Act No. 1949:XX.

⁵⁹ Orders in Council Nos. 751/1945. ME, 1159/1945. ME; Departmental Order of the Minister of Finance No. 17.060/1945. PM; »Országos Gazdasági Tanács.«

⁶⁰ Orders in Council Nos. 12.090/1945. ME, 230/1946. ME, 3650/1946. ME; Enacting instruction No. 6/1945. GF: »Gazdasági Főtanács«.

⁶¹ Orders in Council Nos. 7640/1948. Korm., 9130/1948. Korm., 9410/1948. Korm., 10.830/1948. Korm., 10.840/1948. Korm., 11.180/1948. Korm., 630/1949. Korm., Act. No. 1949:XV, etc.

⁶² Orders in Council Nos. 4083/1949. Korm., 4148/1949. Korm.

planned management of the people's economy through the *People's Economic Council*,⁶³ having a member of Government as President. This determined, beside the directives and frame-numbers of Planning, tasks of state control and statistical collection of data, brought into harmony the activity of economic organs, and exercised control over the Central Planning Board, Central Bureau of Statistics, National Supervisory Centre, Labour Planning Office and other organs subordinated to it by the Government. Thus it had also a control activity. It was under a separate head in state budget. Later it was liquidated and its task reverted to the Government.⁶⁴

Some other organs proved to be more permanent. Thus the *Council of Planned Economy* and the *Central Planning Board*⁶⁵ created under supervision of Prime Minister to elaborate the plans of people's economy⁶⁶ and supervise their execution, with county agencies,⁶⁷ headed by a President appointed by the Presidium of the People's Republic. Its local organs are the officials responsible for promoting plan-fulfilment,⁶⁸ and the managers of state enterprises.⁶⁹ Also the *Central Bureau of Statistics*,⁷⁰ functioning under supervision of Government, has a controlling sphere of action; its territorial organs are the county boards of statistics, district and town inspectorates of statistics.⁷¹ The Material and Price Office⁷² organized under supervision of the Minister of Industry terminated soon;⁷³ its competence of price regulation was taken over by the Council of Ministers, the President of the Central Planning Board, the competent Ministers and the local offices of price regulation.⁷⁴ Later a *National Price Office*⁷⁵ was organized under supervision of the Minister of Finance. Its supervision, however, has been taken over by the Government and exercised by a delegated member of its. Also the Council and Secretariat of contraventions,⁷⁶ reorganized from the Council of Petty Offenses,⁷⁷ functioned subordinated immediately to Government; but later it was liquidated.⁷⁸

⁶³ Act No.1949:XVI; Decree of legal force No. 3/1952. tvr.: »Népgazdasági Tanács«.

⁶⁴ Decree of legal force No. 20/1952. tvr.

⁶⁵ Act No. 1947:XVII; Orders in Council Nos. 8530/1947. Korm., 4279/1949. MT, Decision in Council No. 1044/1958 (XII. 9) Korm. h.: »Tervgazdasági Tanács«, »Országos Tervhivatal.«

⁶⁶ Acts Nos. 1949:XXV, 1951:II, 1958:II.

⁶⁷ Instruction No. 0.370/6/1949. OT.

⁶⁸ Orders in Council Nos. 10.520/1947. ME, 15.221/1947. ME.

⁶⁹ Art. 1/2—3 of Act No. 1948:XXXVII.

⁷⁰ »Központi Statisztikai Hivatal.«

⁷¹ Acts Nos. 1929:XXX, 1952:VI.

⁷² Orders in Council Nos. 5740/1946. ME, 6470/1946. ME, 6890/1946. ME; Departmental orders of the Minister of Industry Nos. 43.000/1946. Ip. M., 3647/1946. Ip. M., 103.035/1947. Ip. M.: »Anyag- és Árhivatal.«

⁷³ Orders in Council Nos. 5380/1948. Korm., 5400/1948. Korm.

⁷⁴ Order in Council No. 46/1955. MT.

⁷⁵ Decision in Council No. 31/1956. Korm. h., Order in Council No. 10/1957. Korm.: »Országos Árhivatal.«

⁷⁶ Art. 16 of Decree of legal force No.17/1955. tvr.: »Szabálysértési Tanács, Titkárság.«

⁷⁷ Act No. 1929:XXX; Departmental order of the Minister of Interior No. 287/1930. BM: »Kihágási Tanács.«

⁷⁸ Art. 8 of Act No. 1956:IV.

There were and are also several other central control organs. The financial administration had had in the time of the dicastrial system, before 1848, a separate central organ: The Hungarian Court Chamber,⁷⁹ founded in Ferdinand I's days. Earlier the Chief Treasurer⁸⁰ had had some financial competence. The Chamber's independence from the Austrian financial chamber was assured by a number of Acts⁸¹ but with no full success.⁸²

Present central control authorities are the competent Ministers, in questions of financial law in particular the *Minister of Finance* and the organs subordinated to him.

These organs exercise their control activity partly deciding over legal remedies, partly in the hierarchy of offices, on the way of supervision. According to the Act on administrative procedure⁸³ if the superior administrative organ exercising its authority of supervision has set down as a fact that an order or disposition of a subordinated organ had trepassed on a legal rule, it is liable to take measures for redress of grievances. The financial organs generally function under superintendence of the Ministry of Finance but also some subordinated organs take part in supervision.⁸⁴ Ministries, organs of national competence, the Hungarian National Bank, central associations of co-operatives are under the control of the Minister of Finance. The systematic economic supervision of general directorates, directorates, departments of Ministries, that of offices, institutes and establishments under their supervision, and that of secondary organs functioning in enterprise form and of enterprises is exercised by organs directing them immediately. The Ministers send a summary report of the result of this systematic control to the Minister of Finance half-yearly.

A part of central organs functioning under superintendence of the Minister of Finance performs banking and credit tasks. One of the oldest such organs was the Central Treasury,⁸⁵ a great part of its functions devolved, however, to competence of the Postal Savings Bank and the Central Corporation of Banking Companies since the reorganization of finances after World War I (1924). Paying salaries and pensions and related control activity were transferred to the Central State Salary Office.⁸⁶ The affair of salaries became decentralized to the competent Ministries and the Salary Office changed its name to State Pension Office.⁸⁷ Later it ceased to exist and a National Pension Institute was created,⁸⁸ and at last this whole authority merged in the administration of the single social insurance pension

⁷⁹ Acts Nos. 1608: k. e. V., 1687:XIV: »Magyar Udvari Kamara.:

⁸⁰ »Tárnokmester.« (Ancient high feudal rank in Hungary).

⁸¹ Acts Nos. 1609:XXI, 1655:XI, 1715:XVIII, 1723:XVI, 1741:XIV.

⁸² Korbuly 303—4.

⁸³ Art. 63 of Act No. 1957:IV.

⁸⁴ Decree of legal force No. 29/1955. tvr.

⁸⁵ 1868; Royal rescript from July 20, 1874.

⁸⁶ Orders in Council Nos. 2533/1925. ME, 4000/1935. ME.

⁸⁷ Order in Council No. 60/1950. MT.

⁸⁸ Order in Council No. 190/1950. MT.

of the working people under supervision of the Minister of Labour.⁸⁹ The most important organ of banking control is the *Hungarian National Bank*. After liquidation of the Austro-Hungarian Bank⁹⁰ there were created temporarily a National Bank of Issue⁹¹ and a Foreign Exchange Control Centre.⁹² Hereupon there was created the Hungarian National Bank.⁹³ After World War II its General Council has been democratized,⁹⁴ and later the Bank has been nationalized, simultaneously with the great Banking Houses.⁹⁵ The representation in General Assembly and the General Council were reorganized,⁹⁶ loaning to social organs legalized.⁹⁷ Subsequently several organs of the Bank (General Council, Executive Committee) were liquidated.⁹⁸ A delegate of the Minister of Finance became President of the Board of Directors. After this the President and his deputies were appointed by the Presidium of the People's Republic on proposition of the Council of Ministers, the managing directors were nominated by the Council of Ministers on proposition of the President.⁹⁹ Recently the supervision over the Bank has reverted to the Minister of Finance again.¹⁰⁰

Another important organ of banking control is the *Central Corporation of Banking Companies*.¹⁰¹ It has been created to promote economic interests; later its competence has been extended to hold revisions at enterprises transacting banking and exchange business, to undertake auditing on petition of the enterprises, to take part in arranging lotteries.¹⁰² In its framework functioned also the National Economic Council.¹⁰³ Here can be mentioned also the National Council for Credit Operations.¹⁰⁴ This later ceased to exist and its competence was transferred to the Minister of Finance.¹⁰⁵ The competence of the Postal Savings Bank to administer deposits was completed repeatedly;¹⁰⁶ it has got, after supervision by different competent Ministers under that of the Minister of Finance.¹⁰⁷ After a time its savings line of business was taken over by the National Savings Bank, other lines of business by other organs (Hungarian National Bank, Central Corporation of Banking Companies) but

⁸⁹ Decrees of legal force Nos. 30/1951. tvr., 28/1954. tvr.; Order in Council No. 1037/1957. Korm.

⁹⁰ Acts Nos. 1878:XXV, 1917:XVIII; Order in Council No. 6935/1919. ME; Art. 8 of Act No. 1920:IV.

⁹¹ Art. 8—11 of Act No. 1921:XIII: »Állami Jegyintézet.«

⁹² Art. 2 of Order in Council No. 6700/1922. ME: »Devizaközpont.«

⁹³ Act No. 1924:V: »Magyar Nemzeti Bank.«

⁹⁴ Orders in Council Nos. 6950/1945. ME, 11.970/1946. ME.

⁹⁵ Acts Nos. 1947:XXX, 1948:XXXVI.

⁹⁶ Act No. 1948:XXXII; Order in Council No. 20/1948. Korm.

⁹⁷ Act No. 1948:XLV.

⁹⁸ Decree of legal force No. 1/1949. tvr.

⁹⁹ Decision in Council No. 1084/1956. Mt. h.

¹⁰⁰ Decree of legal force No. 23/1956. tvr.

¹⁰¹ Art. 1. of Act No. 1916:XIV; Acts Nos. 1917:IX, 1920:XXXVIII, 1923:XXXII: »Pénzügyi Központ.«

¹⁰² Art. 1 of Act No. 1926:XIII.

¹⁰³ Order in Council No. 751/1945. ME: »Országos Gazdasági Tanács.«

¹⁰⁴ Order in Council No. 5610/1931. ME: »Országos Hitelügyi Tanács.«

¹⁰⁵ Orders in Council Nos. 8220/1948. Korm., 4109/1949. Korm.

¹⁰⁶ Acts Nos. 1885:IX, 1889:XXXIV, 1925:IX.

¹⁰⁷ Act No. 1926:XIV.

the mediatory service of offices of the Hungarian Post has persisted also hereafter.¹⁰⁸

The *Hungarian Bank of Investments*¹⁰⁹ grants investment credits and exercises the related control under supervision of the Minister of Finance and professional direction of the Central Planning Board. Its Centre is the Investment General Directorate of the Ministry of Finance having the sphere of action of a ministerial department. The organs of banking control supervise generally on the spot, according to the valid rules,¹¹⁰ the execution of orders concerning money circulation, credit management, financial transaction of investments and state loans at every administrative organ, enterprise, agricultural machine centre, institute, social organ with state assistance and co-operative having accounts at the Hungarian National Bank.

Until most recent times also the different financial authorities functioned under the exclusive supervision of the Minister of Finance. In the beginning organs of first instance for taxes and duties were the town and village revenue offices, in Budapest the district tax accountancy departments.¹¹¹ The royal revenue offices were, in the beginning, only treasuries but they turned, after World War I, into financial authorities of first instance.¹¹² The royal district tax offices were, in the beginning, financial authorities of first instance,¹¹³ later, however, their task was transferred to the royal revenue offices and the district offices survived only in Budapest.¹¹⁴ The county financial directorates were organized in the counties to administer some tasks of the later royal district tax offices and in duty cases as appeal authorities,¹¹⁵ and later generally as authorities of second instance.¹¹⁶ In other tax affairs: mixed organs of municipalities and Chambers, resp. organs of the municipalities (assessments appeal committees, fiscal committees of the administrative commission)¹¹⁷ were financial authorities of second instance. Authorities of third instance were partly the Minister of Finance, partly the Administrative High Court. The Office for Assessment of Duties¹¹⁸ managed the duty affairs in Budapest. After World War II the town and village revenue offices and district tax accountancy departments in Budapest were reorganized to state revenue offices and there were created state revenue offices also in some villages determined by the Minister of Finance. The former state revenue offices and purchase tax offices were unified and reorganized to district tax offices,

¹⁰⁸ Order in Council No. 1870/1949. Korm., Departmental Order of the Minister of Finance No. 10/1958. PM.

¹⁰⁹ Decision in Council Nos. 43/1948. Mt. h., 1084/1956. Mt. h.; Instructions of the Minister of Finance Nos. 81/1955. (PK. 27). PM. ut., 137/1955. (PK. 56). PM. ut., 136/1958. (PK. 11). PM. ut.: »Magyar Beruházási Bank.«

¹¹⁰ Decree of legal force No. 29/1955. tvr.

¹¹¹ Act No. 1889:XXVIII: »Adóhivatal«, »Adószámviteli osztály«.

¹¹² Act No. 1889:XXVIII, Art. 2/2a of Act No. 1924:IV: »Kir. adóhivatal«.

¹¹³ Act No. 1876:XV: »Adófelügyelőség«.

¹¹⁴ Art. 37 of Act No. 1889:XXVIII; Departmental order of the Minister of Finance No. 24/1927. PM.

¹¹⁵ Act No. 1889:XXVIII: »Pénzügyigazgatóság.«

¹¹⁶ Act No. 1923:VII; Departmental orders of the Minister of Finance Nos. 600/1927. PM; 12 000/1949. PM.

¹¹⁷ »Adófelszámolási bizottság«, »Közigazgatási Bizottság Adóügyi Bizottsága«.

¹¹⁸ Art. 37 of Act No. 1889:XXVIII; Order in Council No. 1500/1936. ME: »Illetékkiszabási Hivatal.«

with appeal to the county financial directorates.¹¹⁹ In Budapest the district tax offices and district tax accountancy departments were substituted by district revenue offices discharging also the duties related to the purchase taxes.¹²⁰

A *Central Revenue Office*¹²¹ was created in Budapest under immediate supervision of the Minister of Finance to impose and administer taxes of state and communal enterprises drawn into the single-account-system of encashment of the Hungarian National Bank.¹²² At first it administered all taxes and dues also of private enterprises drawn into the single-account-system; the enterprises of foreign financial interest belong, however, at present to the financial department of the executive committee of the Council in the fifth district of the Capital.

Customs organs were, for a long time, the customs offices, Central Board of Customs and the Minister of Finance.¹²³ Later the customs affairs were transferred to the competence of the Minister of Foreign Trade whose customs organs are the *Central Headquarters of Customs Offices*, a Customs Inspectorate in Budapest as organ of secondary instance, the customs offices, customs local agencies and the frontier customs posts.¹²⁴

After creation of local Councils¹²⁵ the financial authorities have got from immediate supervision by the Minister of Finance under that of the Councils as *Financial Departments of Executive Committees of the Councils*,¹²⁶ save the Central Revenue Office, the customs organs and the finance guards which have not got under Council control.¹²⁷ And the professional superintendence of the Minister of Finance has been maintained also for the Council special organs, according to the socialist principle of »double direction«. On the other hand, the county, district and town Councils and their executive committees systematically make also heads of other financial organs (Hungarian National Bank, Bank of Investments, National Savings Bank, State Insurance Office, etc.) on their territories render account of their affairs. They may, however, give no orders to them only they make their reflections known to their supervising organs.¹²⁸ The competence of financial departments of the executive committees of local Councils is determined by ministerial orders.¹²⁹ Recently the administration of village tax affairs has been returned from competence of district Councils, where they had been centralized for a time, to that of

¹¹⁹ Order in Council No. 13 200/1948. Korm.; Departmental order of the Minister of Finance No. 15 800/1949. PM.

¹²⁰ Departmental order of the Minister of Finance No. 326 900/1948. PM: »Kerületi Adóhivatal«.

¹²¹ Order in Council No. 4186/1949. Korm.; Departmental order of the Minister of Finance No. 251 800/1949. PM: »Központi Adóhivatal«.

¹²² So-called Single-Account Enterprises (»ÁFSZ-vállalatok«).

¹²³ »Vámhivatal«, »Központi Vámigazgatóság«.

¹²⁴ Decrees of legal force Nos. 24/1952. tvr., 16/1954. tvr., 7/1955. tvr.; Departmental instruction of the Minister of Foreign Trade No. 50/1956. (KK. É. 40). KKM. ut.

¹²⁵ Acts Nos. 1950:I, 1954:X.

¹²⁶ Orders in Council Nos. 143/1950. MT, 24/1951. Mt.

¹²⁷ Art. 24 of Order in Council No. 143/1950. MT.

¹²⁸ Decision in Council No. 1070/1954. Mt. h.

¹²⁹ Departmental orders of the Minister of Finance Nos. 6300—2/1950. PM. 6300—3/1950. PM, 6300—K/1950. PM, 11—50/1953. PM.

executive committees, resp. special administrative organs of village Councils, if it necessary, with contraction of more villages.¹³⁰

Also the systematic supervision of organs under Council control has been organized,¹³¹ as follows: a) The financial departments and other administrative organs of the executive committees of county (Capital, city) Councils are supervised by a reviser agency of the Ministry of Finance; b) those of the district (town) Councils by financial departments of the executive committees of county (Capital, city) Councils; c) the administrative organization of the executive committees of village Councils and the institutes and enterprises under their control by the financial departments of the executive committees of district Councils. In addition the special administrative organs of the executive committees of Councils exercise the systematic economic supervision of enterprises, associations, institutes, etc. being under their direction, what does not concern the supervision also by competent Ministers. The controlling of co-operatives is a task of their directing authorities. The lower organs make accounts for the higher ones. The special administrative organs (in compliance with the principle of »double direction«) render accounts for both directing authorities.

5

Among the central control organs we have to mention also the *Attorney General of the Hungarian People's Republic* and generally the attorney organization watching, in the sense of the Constitution,¹³² over observance of the socialist legality and proceeding in the course of their control activity independently from the organs of administration and from the local organs of state power (Councils).¹³³ According to the Act on the administrative procedure¹³⁴ the protest of attorney may be applied also in the financial procedure. The administrative organ has to examine this in eight days. If it considers it well-founded, it annuls or reverses its own order; if, however, it considers it unfounded, it presents the documents, in eight days, to its own superior authority for supervision. The latter makes provisions, concerning the merits of the cases, in further thirty days.

2. Internal Organic Control

The internal control endeavours to strengthen and complete the external control of organizations. Some try to confront these two types of control as formal and meritory supervision. This, however, is not right. The points of view of legal and economic controls may not be monopolized by either of these two methods. The external control is more suitable to the idea of supervision because the internal one is but a self-control. And there is no

¹³⁰ Decision in Council No. 1008/1957. Korm. h.

¹³¹ Decree of legal force No. 29/1955. tvr.

¹³² Art. 42—44 of Act No. 1949:XX.

¹³³ Decree of legal force No. 13/1953. tvr.

¹³⁴ Art. 61 of Act No. 1957:IV.

organ which could be considered as unprejudiced against itself. Thus the guarantees cannot exist in the case of internal control in the same measure and sense as in that of the external one. The internal control may, therefore, be appreciated but as a completion, in some cases substitution, of the external control if this, for some reasons, does not function.

It is especially the decree about the reform of control of the administrative management,¹³⁵ liquidating the audit offices, which has insisted on realizing such a reform of internal control of management of budget credits that met the requirements of the people's democratic administration and contained also important accountancy simplifications. It has separated administration from management and management from its internal control, trying to substitute, on the field of accountancy, the superfluous and multifold recording system with a simple, lucidly arranged registration containing all essential data of management. During execution of this program *budget departments* were organized at each higher authority of administration and at a great number of other authorities. To lower authorities there were delegated special budget clerks. Their tasks have been assignation, audit of accounts, legalization, numerical revision, book-keeping taken over from the liquidated audit offices. A task of the central budget department of the Ministry is also the direction of the planned budget management of the whole department.

The internal control of management and accountancy of budget credits is performed by *audit departments*, — organized in Ministries and at other administrative organs and subordinated immediately to the Minister or to the head of the organ, — resp. by their agencies (deputy clerks), and for want of these by the audit department of the superior organ. Their task is to control whether credit management of their authorities and of any administrative organs subordinated to them (budget department, section, referent) is motivated planned, profitable and legal. They supervise the undertaking of obligations, assignments, management of property, financial and material managements, etc. They may, however, not impede the course of management. About their objections they inform the head of the managing organ. The competence of the late audit offices to control the credit management has been transferred to the audit departments and their competence related to non-budget credits to the competent special sections.

According to another order¹³⁶ the internal control belongs first of all to the *heads* of the administrative organs and enterprises. They have to supervise personally execution of important legal rules, orders or decisions. For other control they have to arrange audit sections (groups). To lower organs they delegate agents; these are instructed by the head of the organ. But the audit department of lower organs is not subordinated to that of the superior ones.

Also the *chief accountants* (head book-keepers) have an important role in our present system of control. Their function has been organized at first in the enterprises, then, on the model of these, also in administrative organs with an important sphere of action. At public enterprises¹³⁷ the head of book-keeping (chief accountant) is jointly liable with the head of the

¹³⁵ Preamble, Decree of legal force No. 2/1950. tvr.

¹³⁶ Order in Council No. 75/1951. MT.

¹³⁷ Order in Council No. 2060/1949. Korm.

enterprise (director, manager). He has to refuse implement of any illegal order, save after getting, in spite of his protestations, directions, in writing. But this he had to report to the competent Minister. The order contains also some personal guarantees decreeing that the chief accountant may be appointed, dismissed, moved, attached for special service, sent on leave, suspended only with previous consent of the competent Minister.

The decree on state enterprises¹³⁸ has reorganized the situation of chief accountants. It has reserved the rule that the chief accountant is personally responsible, together with the head of enterprise, for a legitimate financial management and for the order of administration of the enterprise. He is obliged, also henceforward, to report fulfilling of illegal orders, reserved in writing, not to the Minister, however, but to the directing organ. Guarantees of his appointment and dismissal have remained. According to a further order¹³⁹ he is a deputy of the enterprise director in the orbit of financial and credit management and of his control activity. He is appointed and dismissed by the same organ as the head of the enterprise. Against disciplinary punishment of the chief accountant the chief accountant of the immediately superior organ may make remarks to the chief accountant of the Ministry and this to the Minister. He gets a bonus or reward not from the enterprise but from the immediately supervising organ. These rules try to assure his disinterestedness and independence. His countersigning is necessary for a number of documents. He has to protest against dispositions of the director which are illegal or interfere with the interests of the enterprise. The dispositions confirmed in writing he has to put into effect, but he has also to report this to the head of the next supervising organ.

The institution of *Ministry Chief Accountants*¹⁴⁰ has been patterned after the book-keepers of enterprises. Such organs function also in the ministerial departments qualified for direction of state enterprises or other economic organs. The Chief Accountant of the Ministry functions under direction of the Minister or his deputy for this purpose, and that of the department under that of the head of the department. The Chief Accountancies of economic Ministries function in the framework of the Ministries as their departments and those of the departments function in quality of sections of them. The competent Minister previously informs the Minister of Finance on transferring, suspension or dismissal of his Chief Accountant. The competence of the Chief Accountants contains, beside general control, performance of records, balances, account of results, supervision of wage fund management, superintendence and control of financial plans of enterprises. If the malpractice had not been repaired, the Chief Accountant of the department reports it to the Chief Accountant of the Ministry and to the Deputy Minister relied with immediate direction of the department; the Chief Accountant of the Ministry makes reports to the Minister, resp. to his Deputy relied with direction of the Chief Accountancy.

Another order¹⁴¹ has prescribed for the heads of each directing organ to provide through their Chief Accountancies for at least one general local super-

¹³⁸ Decree of legal force No. 32/1950. tvr.

¹³⁹ Order in Council No. 125/1951. MT.

¹⁴⁰ Order in Council No. 124/1951. MT: »Minisztériumi főkönyvelők«.

¹⁴¹ Departmental instruction of the Minister of Finance No. 181—1/1954. PM. ut. (PK. 8).

vision a year at every budget organ, enterprise and co-operative under their supervision. This task, however, has proved to be unrealizable.^{141a}

A democratic idea manifests itself also in the endeavour to assure control, beside the special organs, also for representatives of the working people. This idea inspired the creation of *factory committees*.¹⁴² And later, after liquidation¹⁴³ of the worker councils,¹⁴⁴ also *factory councils*¹⁴⁵ were organized, under direction of the Trade Unions, with a competence of supervision, reporting and ordering. The factory committees have to take care of their creation.

B) Functional Administrative Control

Another way of administrative control besides the organic control, which functions automatically, is a supervision, functioning not automatically, *ex officio*, from above or from inside, but on external impulse, generally on the initiative of private persons. This way of control can have two forms according to the subjects of initiative who can be either anybody or a closed circle of interested persons. The first possibility is the so-called »*popularis actio*«, the second the legal remedy.

1. »*Popularis Actio*«

The popular action assures for everybody, whether he is immediately interested or not, a possibility to start a procedure of general interest by reporting the facts, necessary to initiate the procedure, to the competent authority. This action had been known also by the Roman law. E. g., everyman had a right to action in case of delicts against common property.¹⁴⁶ And it appeared also on the scene of the modern criminal law though only as an exception.¹⁴⁷ In recent times one applies it more and more and it has got a place, in different forms, also in administrative and financial laws.

One of its forms in the present Hungarian law is the so-called *book of complaints*.¹⁴⁸ According to the order on this subject¹⁴⁹ the criticism coming from below has an important rôle in revealing and eliminating the faults and so improving the works. Therefore it orders to establish complaint-books in every bureau, office, plant, workshop, store of any organs, institutes or institutions of state power or administration, state organs, national enterprises or co-operatives which are closely related to the people at large, save the military administration. The head of the organ has to observe the inscriptions

^{141a} Cf.: Kiss 371.

¹⁴² Departmental order of the Minister of Industry No. 50 000/1945. Ip. M.: »Üzemi bizottság«.

¹⁴³ Decree of legal force No. 63/1957. tvr.

¹⁴⁴ Decree of legal force No. 25/1956. tvr.

¹⁴⁵ Decision in Council No. 1086/1957. Korm. h.: »Üzemi tanács«.

¹⁴⁶ Furtum publicum, peculatus, damnum iniuria datum. Cf.: Mommsen I, 184.

¹⁴⁷ In Hungary, e. g., Art. 135 of Act No. 1878/V; Art. 69, 85 of Act. 1930/III; Art. 12 of Order in Council No. 1400/1945. ME; Art. 8 of Act No. 1946/VII; Art. 6 of Act No. 1946/XIV; Art. 3/2 of Decree of legal force No. 12/1957. tvr.

¹⁴⁸ »Panaszkönyv«.

¹⁴⁹ Order in Council No. 194/1951. MT.

daily and make the appropriate actions. And even the authority exercising the supervision has to inspect the complaint-books systematically and if necessary to intervene.

Another way, in our present law, to general initiation is the *information of common interest*.¹⁵⁰ It appeared first in a decree¹⁵¹ reorganizing the National Supervisory Centre. According to this decree there was a duty of honour of each citizen of the Hungarian People's Republic, following from the Constitution,¹⁵² to call attention of the Centre to faults, shortcomings or malpractices interfering with general interests, in organization or function of administrative organs or public enterprises. The Centre could initiate also mass meetings to draw in as wide range of working people as possible. This idea was expanded by Art. 5 of Act No. 1952:II reorganizing the National Supervisory Centre. This started also from the principle that the Centre in course of its supervisions had to rely on data brought to its knowledge by the working people and, therefore, performed its duties with participation of their circle as wide as possible. It has enacted again that there is a duty of honour of each citizen of the People's Republic to call attention of the Centre to faults damaging public interest and even it has gone a step further, to employ more profitably the experiences of working people, organizing an *Office for Notifications of General Interest*.¹⁵³ The Centre could charge with inquiry also the competent supervisory organ. After liquidation of audit offices also an order,¹⁵⁴ reorganizing the internal control, denoted (without mentioning expressly notifications) as a task of control of new type to ascertain mass opinion. Act No. 1954:I, however, has spoken expressly about administration of people's notifications. According to this, heads of administrative organs, of local organs of state power and of economic organs are personally responsible for making a standing task for organs under their supervision to be aware of notifications of the population and to provide for a systematic control in this respect. On the basis of this Act there were organized some bureaux for popular notifications in Ministries and in county, district and town councils. This Act decreed first that names of informants, if they wished or the interest of the affair demanded so, could not be revealed by the organs performing the inquiry.¹⁵⁵ The personal protection of announcers is served also by the disposition that if prejudicial measures were taken against the informant, because of his information, whether in his labour relations or in another connection, the organ of supervision had to re-establish the legal conditions immediately and to care of his rehabilitation and indemnification. And then preparators of these measures were to be called to account disciplinarily and financially.¹⁵⁶ And even the Act declares a felony any detrimental

¹⁵⁰ »Közérdekű bejelentés«.

¹⁵¹ Art. 15—16 of Decree of legal force No. 17/1949. tvr.

¹⁵² The Decree must think here on Art. 59 of Act No. 1949:XX, according to which it is a fundamental duty of each citizen of the Hungarian People's Republic to protect the estate of the people, to confirm the social property, to increase the economic capacity of the Hungarian People's Republic, to raise the level of life of the working people, to increase their civilization and to enforce the order of the people's democracy.

¹⁵³ »Közérdekű Bejelentések Hivatala«.

¹⁵⁴ Art. 3 of Order in Council No. 75/1951. MT.

¹⁵⁵ Art. 8/1 of Act No. 1954:I.

¹⁵⁶ Art. 8/2 of Act No. 1954:I.

measures against the informant.¹⁵⁷ These provisions and also the Office for Notifications of General Interest are maintained by the decree organizing a Ministry out of the National Supervisory Centre.¹⁵⁸ The decree on the annual systematic economic supervision of state organs and co-operatives¹⁵⁹ also accentuates that the control organs in course of executing their tasks of supervision have to rely on initiative of the working people and on data furnished by them. In any case, they have to control verity of these data.

This problem is regulated again, with not many changes, by the Act on general rules of the administrative procedure.¹⁶⁰ According to this Act every citizen is entitled and obliged to reveal the faults and shortcomings observed in any domains of state and economic life and to present a suggestion to eliminate these faults. It confirms the rule that the organ conducting the investigation may not reveal the person of informant if he insists on or if the interest of the affair desires so. It imposes, however, also restrictions on this anonymity by ordering to reveal, at request, the person of informant if his information contains facts proved to be untrue which, if confirmed, would have given cause for a criminal or disciplinary procedure or they would have held the person or organ up to public obloquy. But there is room for revealing the person also in this case only if the head of the superior organ of the calumniated person or organ considers reasonable to take legal action against the informant. Also this Act orders about immediate annihilation of measures being disadvantageous to the informant, about an adequate rehabilitation and reparation for the offence and about calling to account the offenders. At last the Act organizing a people's control¹⁶¹ makes one of the tasks of supervision to struggle also, with help of facts brought to their knowledge by notifications of public interest, for revealing and eliminating the hostile, corrupt and bureaucratic elements, prescribing personal protection, satisfaction and reparation for the informants again.

2. Remedies

According to our new Code of fiscal procedure,¹⁶² in fiscal affairs, including also the legal redresses, there are to be applied the general rules of administrative procedure and rules of the Code. The financial organ may order, in course of this procedure, evidence to be taken, interrogate parties, witnesses, experts, hold an inspection, ordain auditing, etc. (special tax control), and may accomplish corrections, rectifications too (official remedies).

Thus there are valid, also for financial remedies, the general rules of administrative procedure. We agree with *J. Martonyi's* interpretation¹⁶³, according to whom the meaning of this disposition is that as the general rules of administrative procedure are equally valuable in the range of all

¹⁵⁷ Art. 9 of Act No. 1954:I.

¹⁵⁸ Art. 20 of Decree of legal force No. 28/1955. tvr.

¹⁵⁹ Art. 10 of Decree of legal force No. 29/1955. tvr.

¹⁶⁰ Art. 67—8 of Act No. 1957:IV.

¹⁶¹ Art. 3, 23 of Act No. 1957:VII.

¹⁶² Art 3—4 of Order in Council No. 57/1957. Korm.; Art. 6—10 of Enacting Order No. 32/1957. (IX. 30). PM.

¹⁶³ Martonyi: Beszedési eljárás, 53.

special branches of administration, the special procedure Codes, as e. g. the fiscal one, may not depart from its principles but they can only complete them in conformity with the specialities of their domains.

According to the rules of the Act¹⁶⁴ which are valuable also in the financial procedure, there is, in principle, but one instance of appeal. This agrees with the system of appeal of the Act on Councils¹⁶⁵ but it is not in harmony with a number of legal rules which assure remedies of more instances called generally revisions. Against the decision on the merits of a case of first instance anybody may appeal whose right is violated by it; against the decision of second instance there is, however, no more appeal. Appeals have generally a delatory effect. There is no appeal at all if an Act, decree or order (of Presidium, Government) excludes it or if the Government or a member of it was the first instance. Second instances are as follows: a) at Council organs against decisions of the executive committee or its President the superior executive committee, resp. the Government; against decisions of the special administrative organs of executive committee or that of the President of the executive committee in special administrative questions the superior special administrative organ; b) at other organs against decisions of Ministries and central administrative organs the superior administrative organ, in last instance the Minister.

The Act wants to help against rigidity of the appeal system of one instance assuring a right to lodge a *complaint* also if there is no more possibility of appeal. In my opinion this right results also from the Constitution of the People's Republic which guarantees the freedom of speech.¹⁶⁶ If books of complaints had been established and even the disinterested were entitled to lodge a complaint, it would be thoroughly illogical to exclude of this right exactly the interested themselves. J. Martonyi¹⁶⁷ presses for giving a strict effect to the principle of remedies of a single instance and would exclude, therefore, any remedies granted in special legal rules. He may not think, however, on further restrictions of complaints. This would be inopportune not only for the reasons mentioned above but also because the second instance is, pursuant to the Act of procedure, often no central organ and so also the realization of unity of the legal order would encounter, in absence of special guarantees, difficulties. Besides, this is the only remedy in our positive law which is practicable also against omission or procrastination of deciding (*silence de l'administration, déni de justice*) as a remedy *a priori*.

The development of the right of complaint has in this country also some antecedents of legal history. The Golden Bull¹⁶⁸ had obliged the king as early as in the thirteenth century to give a hearing to requests and appeals of the royal *servients* and our diets often made use of this right of complaint (*gravamen*) to the kings against illegal measures. And later the municipalities (local government-boards) were allowed to lodge so-called complaints of guarantee¹⁶⁹ to the Administrative High Court against some injurious

¹⁶⁴ Art. 45—51 of Act No. 1957:IV.

¹⁶⁵ Art. 66/1 of Act No. 1954:X.

¹⁶⁶ Art. 55/1 of Act No. 1949:XX.

¹⁶⁷ Martonyi: Beszedési eljárás, 54—5; Lakosságadóztatási eljárás, 12—3.

¹⁶⁸ »Aranybulla« (1222, c. 1).

¹⁶⁹ Act No. 1907:LX: »Garanciális panasz«.

Government orders which could be, if violation of law was found, annulled. One could turn also to the Head of State through a private secretary's office (corresponding to the Lord Chamberlain's Department), to the President of Republic through a people's office organized for this purpose (1949). To the Parliament private men could plead through a Member of Parliament, municipalities and some bodies could write up immediately. There was always a right of complaint also to the Ministers. Against emission or postponement of deciding and against misuses of authority (*excès de pouvoir*) our law has not assured such a protection as the French law did partly by the help of the judicial practice (*détournement de pouvoir*).¹⁷⁰ In this country there had never been an administrative jurisdiction of general competence like in France. It had been far back in the Past when King Ladislaus decreed to flog the judges who had temporized deciding.¹⁷¹ In case of denying competence the so-called negative clashing of authorities of courts and administrative organs enjoyed temporarily (1907—1948) a protection by a High Court of Competence,¹⁷² composed essentially of some members of the Supreme Court and Administrative High Court. At present this Court has ceased to exist,¹⁷³ and the ordinary Courts decide in their own competence their disputes with administrative authorities concerning the competence. Their judgement is obligatory also for the latter.¹⁷⁴ In our earlier law the jurisprudence assured the competence of the Administrative High Court at least in a special problem: against decision of administrative authorities refusing, resp. not prescribing to deliver certificates which they had to make according to a legal rule.¹⁷⁵

Rights of complaint and plea are definitely assured for citizens in the most constitutions. E. g., everyman may turn freely, according to the Swiss Constitution,¹⁷⁶ to public authorities of the Federation and Cantons (*Petitionsrecht*). These are obliged to accept the petitions addressed to them in writing if these remain, concerning form and content, in the framework of law, respect and morals, and fall within the competence of the authority; and even they are generally obliged to make possible also an oral audience if it does not trouble considerably the working process.¹⁷⁷ The rights of complaint and plea are safeguarded also by nearly each people's democratic constitution¹⁷⁸ and by some recent non-European constitutions.¹⁷⁹

According to our present Act on administrative procedure¹⁸⁰ a complaint may be lodged against decisions and dispositions in the merits of administrative

¹⁷⁰ Cf.: Letourneur—Hamson 258—79.

¹⁷¹ Si quis iudicium distulerit litigia ultra triginta dies, vapuletur. III. 24.

¹⁷² Acts Nos. 1907:LXI, 1928:XLIII: »Hatásköri Biróság«.

¹⁷³ Art. 11 of Act No. 1949:II.

¹⁷⁴ Art. 65 of Act No. 1954:II; Departmental order of the Minister of Justice No. 1/1954. (III. 26). IM.

¹⁷⁵ Art. 22 of Act No. 1896:XXVI; Decisions of the Court of Competence, Nos. 1933. Hb. 47; 1940. Hb. 49, 58.

¹⁷⁶ BV. 1874, Art. 57.

¹⁷⁷ Ruck 66.

¹⁷⁸ Polish 1947, 1952, Art. 5, 73; Rumanian 1948, Art. 34; Bulgarian 1947, Art. 89; Albanian 1946, Art. 29; Czecho-Slovak 1948, Art. 23; DDR 1949, Art. 3/4; Yugoslav 1956, Art. 39; Chinese 1954, Art. 97; Mongolian 1940, Art. 96; Korean 1948, Art. 25.

¹⁷⁹ E. g., Egyptian 1956, Art. 62—3; Cambodian 1956, Art. 14.

¹⁸⁰ Art. 65—66 of Act No. 1957:IV.

affairs by anybody whose rights or legal interests have been violated by them. The interested may lodge a complaint also if the administrative organ has neglected its duty to pass a decision or to make arrangements. The complaint will be judged by the higher authority if the organ which is guilty of default has not redressed the injury. In the matter of decisions and measures by administrative organs of the executive committees of county Councils the executive committee itself proceeds. Limits of right to complaint are as follows: There is no complaint against decisions which can be contested before a Court of Justice; in case of omission of appeal or during pendency of it; after one year from date of delivery of the decision; at last there is no room for repeated complaints in the same affair in default of essential new facts.

The Act on administrative procedure permits also *protests by attorneys*.¹⁸¹ Therefore the interested may apply, instead of lodging a complaint, to the competent attorney for lodging a protest. This kind of remedies is particularly important, as John Beér¹⁸² has called attention to it, because our present law does not assure any judicial protection against decisions of local organs of state power (Councils); protests by attorneys are, however, allowed also against their decisions before the superior organs of state power.¹⁸³ Thus besides possibility of lodging a complaint the only kind of the remedies for the interested in these cases is to turn to the attorney.

All these are, however, but extraordinary kinds of remedies. The ordinary way of remedy in financial law is the *appeal* assured by financial legal rules. Its rules are not contained in the Code of financial procedure but they are decentralized in the several Acts and decrees and in other fiscal rules. E. g., against legality and rate of the imposed land tax one may appeal, depending on the organ of first instance, to the financial departments of the executive committees of district, county, resp. city Councils.¹⁸⁴ Against decisions in cases of legality and rate of house-tax or of its remission one may appeal to financial departments of the executive committees of county Councils (instead of the late county financial directorates). If it is necessary to determine the ratable value of house property by local estimation or if it is demanded by the taxpayer, the financial department gives over the appeal to the committee of estimation to effectuate the procedure of estimate and the taxpayer may employ, at his own expense, also an expert called in to give a second opinion.¹⁸⁵ The same is the procedure as regards legality and rate of contribution to housing repairs where the house possessor as well as the interested tenant may appeal, anyhow without delaying force.¹⁸⁶ In the matter of general income tax one could, in the beginning, appeal to an assessments appeal committee, resp. to the county financial directorates, at present, however, one can appeal to the financial departments of the executive committees of County Councils,¹⁸⁷ and lodge a complaint to the executive

¹⁸¹ Art. 61 of Act 1957:IV.

¹⁸² Beér 27.

¹⁸³ Art. 1 of Decree of legal force No. 13/1953. tvr.

¹⁸⁴ Art. 14 of Departmental order of the Minister of Finance No. 19/1957. PM.

¹⁸⁵ Art. 25—6 of Order in Council No. 8790/1946. ME; Art. 5 of Departmental order of the Minister of Finance No. 155 000/1946. PM.

¹⁸⁶ Art. 12, 25 of Departmental order of the Minister of Finance No. 266 000/1948. PM.

¹⁸⁷ Art. 39 of Order in Council No. 13 400/1948. Korm.

committees of county Councils.¹⁸⁸ In matter of imposing, reducing and remitting the general income tax of agricultural population one may appeal to the financial organ immediately superior to the imposing council organ. About tax-relief the district Council may decide, however, only until up to a certain maximum amount (Ft 1000). Taxes of higher amount must be presented to decisions of financial departments of the executive committees of county Councils.¹⁸⁹ Concerning the income tax of farmers' co-operatives one appeals to the financial departments of the executive committees of county Councils.¹⁹⁰ Likewise in matter of the income tax of the producers' co-operatives.¹⁹¹ Concerning purchase taxes of private persons there is an appeal of delaying force to the financial departments of the executive committees of county Councils.¹⁹² As to purchase taxes of enterprises one can lodge appeal of delaying force against decisions and measures of the Central Revenue Office¹⁹³ to the Ministry of Finance, against measures and decisions of financial departments of the executive committees of district (town) Councils to financial departments of the executive committees of county (Capital, city) Councils.¹⁹⁴ In customs affairs against decisions of customs offices there is an appeal of one instance to a customs organ designated by the Minister of Foreign Trade, and against decisions in first instance of the latter organ to the Minister of Foreign Trade himself. Appeals against imposing customs duties have a delaying force only related to defraudation of the revenue.¹⁹⁵ The customs purchase tax is administered and levied contracted with customs duties. But this, in contrast to the customs duties, has remained under supervision of the Minister of Finance.¹⁹⁶ In matters of dues (stamp duty, duty on conveyances, Court fees, death-duty, etc.) against legality and rate of imposed duties and penalties one may lodge an appeal of delaying force in further thirty days. Against decisions of financial departments of the executive committees of county (Capital, city) Councils there is no more other remedy.¹⁹⁷ Concerning legality and rate of the motor vehicles duties there is allowed an appeal (instead of the late county financial directorate) to the financial department of the executive committee of the fifth district of Budapest Council.¹⁹⁸

¹⁸⁸ Art. 10 of Order in Council No. 90/1950. MT.

¹⁸⁹ Decree of legal force No. 35/1955. tvr.; Art. 19/1 of Decree of legal force No. 26/1957. tvr.; Art. 59, 62 of Departmental order of the Minister of Finance No. 10/1957. PM.

¹⁹⁰ Art. 6 of Departmental order of the Minister of Finance No. 16/1952. PM.

¹⁹¹ Art. 19 of Departmental instruction of the Minister of Finance No. 93/1955. (PK. 34). PM. ut.

¹⁹² Departmental order of the Minister of Finance No. 21/1955. PM.

¹⁹³ Order in Council No. 4185/1949. Korm.

¹⁹⁴ Art. 36 of Departmental instruction of the Minister of Finance No. 25/1956. (PK. 7). PM. ut.

¹⁹⁵ Art. 34 of Decree of legal force No. 16/1954. tvr.; Decree of legal force No. 7/1955. tvr.

¹⁹⁶ Art. 1/2 of Decree of legal force No. 24/1952. tvr.; Departmental order of the Minister of Finance No. 3455—3/1952. (PK. 21). PM.

¹⁹⁷ Art. 92 of Departmental order of the Minister of Finance No. 6470—52/1950. PM.

¹⁹⁸ Art. 16 of Order in Council No. 4135/1949. Korm.

II. JUDICIAL REVIEW

In the course of the development of our financial law a judicial supervision has been realized in two forms: as administrative and as ordinary jurisdiction. The latter has been executed partly by Courts of common pleas, partly by criminal Courts.

A) Financial jurisdiction of the Administrative High Court

As to the development and questions of principle of the administrative jurisdiction my opinion is exposed in my treatise »Democracy and jurisdiction of public law«¹⁹⁹ and in my address about a reform of the Administrative High Court in Hungary, delivered in the session of November 23rd 1946 of the administrative law department of the Association of Hungarian Jurists. (Magyar Jogászegylet).²⁰⁰ I persist in professing also to-day that the most effective way of legal protection is to assure remedies before the ordinary Courts of Justice and not to organize separate Courts. It would be particularly illogical just in a socialist State which does not privilege private interests against the general ones and considers essentially every law to have a character of public law: To separate public and private laws so rigidly just in the field of judicial remedy bringing them before different kinds of instances in an Age when a great part of civil laws and the whole criminal law is considered to be of public-law character even in liberal legal theories. The practicability of uniform construction of the judicial organization, the requirement of the unity of law, the feasible simplification and rationalization of judicial procedure equally make desirable to exercise jurisdiction by a uniform organization. Thus also the problem of administrative jurisdiction in lower instances will be solved.

Against protection of financial and generally of public laws by the ordinary Courts of Justice also counter-arguments can, of course, be advanced. These are, however, unconvincing. As to the requirement of technicality, this can be guaranteed also within a uniform organization as well as by creating separate Courts. If somebody is afraid of preponderance of civilists in deciding financial disputes he would have logically to struggle also against criminal jurisdiction in the framework of ordinary courts because also the criminal law is a kind of public law. And if somebody is concerned for the prestige of State because of the judicial review, he ought to exclude, consequently, every kind of remedies. Solomon Beck²⁰¹ has rightly professed, in connection with recognition of preponderance of public interests (*Noviczky*), that the assertion of this preponderance is the task of Acts and not that of particular organs of execution. Also the arguments are not decisive which are anxious about effectivity of financial administration because of dilatoriness of jurisdiction. The fastest administration would be to exclude every remedy, but it would be also the worst one. Creation of separate Courts is contrary also to the general democratic requirement according to which everybody,

¹⁹⁹ Budapest (Ed. Hernádi), 1946: pp. XXXII+247.

²⁰⁰ Szabó J.: Közigazgatási bíróság, 51—64.

²⁰¹ Beck 19—25.

in any case, equally can be called to account by the ordinary Courts of the country. By determining the tasks of people's control the Act²⁰² emphasises particularly that this has to exercise its competence »without taking into consideration the persons and their positions.« The trend of evolution, therefore, points also in this country to recognition of competence of the ordinary Courts of Justice. This trend has been acknowledged, in our new law, by the Act on the administrative procedure.²⁰³

This development is not contrary even to the principles of the ancient Hungarian law. These always recognized the possibility of judicial review in questions of public law with a contradictory (litigious) character. The tide turned only after 1849, but traces of competence of the ordinary Courts of Justice in cases of public law could be found also after this time for a while. Thus the financial tribunals and high courts survived for a time and later merged in the ordinary Courts.²⁰⁴ The administrative jurisdiction in the framework of a separate court was realized in this country, following the German example which was but a variant of the French solution, first only in tax and duty affairs. A *Financial Administrative Court*²⁰⁵ was created being a separate court of a single instance entitled to decide in merits of cases. Its members had the same rank like judges of the Court of Appeal in Budapest but the Court decided in the last instance. Besides the system of a single instance there was another fault that the Court had no general financial competence and could pass judgement only in direct tax and duty cases enumerated exhaustively.

Of this Court there was organized, as a next stage of development, an *Administrative High Court*.²⁰⁶ It enjoyed the same guarantees of judicial independence like the ordinary Courts of Justice and even more because its administration was not supervised by the Minister of Justice as that of ordinary Courts. But the faults of its predecessor remained. In contradiction to the original bill this was also organized with a single instance having as a result such overburdening that the cases »ran« over, on the average, in three years. And the same fault resulted in such a bureaucratic swelling of this judicial organization that it had at the end of World War II, in contradiction, e. g., to the nine members of the Supreme Court of the United States, nine presiding and fifty-four other justices. The greatest fault was, however, that it took over the enumerative competence from its predecessor which could not be extended, according to the disastrous disposition of the Act,²⁰⁷ even by applying the principles of *analogia iuris* or *legis*. This fundamentally wrong rule — with which one made experiences elsewhere too, but which nowhere in the world has proved to be useful — was deteriorated so much more by omitting from the enumeration the most important cases of

²⁰² Art. 3 of Act No. 1957:IV.

²⁰³ Art. 55—9 of Act No. 1957:IV.

²⁰⁴ Art. 100 of Act No. 1868:XXI; Art. 18/d of Act No. 1871:XXXI; Art. 1 of Act No. 1871: LXVI; General order of the Minister of Justice No. 646/1871. I. M. E.; Act No. 1872:XXXVIII; Art. 2 of Act No. 1873: XXXIX. Cf.: Szabó: *Demokrácia*, 138—9.

²⁰⁵ Acts Nos. 1883:XLIII, 1886: XI, 1889:XXVIII: »Pénzügyi Közigazgatási Bíróság«.

²⁰⁶ Act No. 1896:XXVI: »Közigazgatási Bíróság«.

²⁰⁷ Art. 19 of Act No. 1896: XXVI.

public law. This fault touched the tax and duty affairs the least but also in this domain occurred, as Charles *Mártonffy*²⁰⁸ shows, such an annoying exception as an Article of the Act on corporation tax²⁰⁹ which excluded judicial review not to speak about other financial lawsuits. This organizational fault, which paralyzed the effect of the Court despite of any merits of its members, was rendered possible by the fact that it was organized in the form of a separate Court and the possibility of administrative jurisdiction was not restituted to the general competence of the ordinary Courts of Justice.

From the financial questions, mostly by the original dispositions of the Act, there came within the competence of the Administrative High Court cases as follows: the overwhelming majority of direct tax and duty cases, salaries of civil servants of State, municipalities and villages save the soldiers' pay; pension cases of civil servants and soldiers; from the municipality cases chiefly the dogs' licences and from the village cases some surplustaxes and fees. Later the salary and pension cases of civil servants were, however, exempted from the jurisdiction and transferred to competence of the Minister of the Interior.²¹⁰ On the other hand, the judicial review was extended also to the hospital fees and public reliefs.

The Administrative High Court has been liquidated by our new law.²¹¹ Instead of it in the midst of the Ministry of Finance there were organized a financial committee to decide in some tax cases, and a salary committee to decide in some salary and pension cases. There was organized also a committee for maintaining the unity of law. The right to complaint assured in other cases was abolished. The cause of liquidation of the Court was, according to the preamble to the bill, the opinion that »the People's democracy found the guarantee of civil rights in the state power exercised by the People itself. And the executive power is in the hands of such authorities which keep in view in every respect the interest of the People. This being so there is no more need for a separate administrative justice.« Later, at the beginning of functioning of the county Councils and of the Budapest Capital Council,²¹² also the committees replacing the Court were liquidated and the right of complaint assured until then in tax, salary, and pension cases ceased to exist.²¹³ The motivation was the remedy system of a single instance introduced by the first Act on Councils.²¹⁴

B) Financial jurisdiction of the ordinary Courts of Justice

The ordinary Courts of Justice had had in Hungary, until introduction of administrative jurisdiction, a general competence also in financial lawsuits. There remained for us a particularly great number of judgements in cases of

²⁰⁸ Mártonffy 9.

²⁰⁹ Art. 34 of Act No. 1940:VII.

²¹⁰ Act No. 1948:LIV.

²¹¹ Act No. 1949:II; Departmental order of the Minister of Finance No. 57 500/1949. PM.

²¹² June 15, 1950.

²¹³ Art. 1—2 of Decree of legal force No. 19/1950. tvr.

²¹⁴ Art. 53 of Act No. 1950:I.

customs and thirtieth parts.²¹⁵ In the second half of the last century this jurisdiction became exceptional and continued its existence only in remnants but in recent times it has come into prominence again. The criminal jurisdiction in financial affairs, however, has kept remaining in this country also in the times of the administrative jurisdiction.

1. Financial Criminal Jurisdiction

In our old law the so-called »inland revenue criminal law«²¹⁶ was regulated by a ministerial order²¹⁷ issued with legal authorization,²¹⁸ and having several amendments.²¹⁹ Revenue contraventions²²⁰ were then any actions interfering with any legal rules concerning taxes or duties. The order used the terms »revenue« and »tax« in extending sense and would penalize generally any violation of financial measures.²²¹ There were grave and petty revenue contraventions. The preliminary proceedings were conducted not by judicial but by financial authorities. In the course of this there were often shocking bargainings to buy the abandonment of proceedings. Only grave revenue contraventions got before Courts. They were tried by tribunals endowed with special competence of revenue affairs, as judges ordinary. Second and last instances were the courts of appeal.²²² Tax frauds were crimes still more serious; they were tried by tribunals as financial criminal courts.²²³ Customs revenue contraventions were regulated separately.²²⁴

In our recent law after orders concerning financial crimes,²²⁵ financial contraventions and malpractices,²²⁶ comprehensive decrees and orders have regulated the financial and customs felonies and other breaks of law.²²⁸ According to these financial (customs) felonies are the acts as follows: a) any acts declared crimes by a tax rule, b) any acts declared tax frauds, curtailments of

²¹⁵ Cf.: Szabó: *Demokrácia*, 139.

²¹⁶ »Jövedéki büntetőjog«.

²¹⁷ Departmental order of the Minister of Finance No. 18 400/1928; Enacting instruction No. 45 400/1928. PM. ut.

²¹⁸ Art. 66 of Act No. 1927/V.

²¹⁹ Departmental orders of the Minister of Finance Nos. 161 094/1945. PM; 161 700/1945. PM; 162 000/1945. PM; 87 645/1946. PM; 87 088/1946. PM; 148 500/1946. PM; 163 200/1947. PM; 4657/1948. PM; 66 000/1948. PM. Orders in Council Nos. 680/1948. Korm.; 9500/1948. Korm.; 11 520/1948. Korm.

²²⁰ »Jövedéki kihágás«.

²²¹ Tomcsányi 465.

²²² Order in Council No. 990/1916. ME.

²²³ Act No. 1920: XXXII.

²²⁴ Orders in Council Nos. 4570/1948. Korm.; 7730/1948. Korm.; 4147/1949. Korm.; Departmental orders of the Minister of Finance Nos. 206 842/1948. PM; 98 800/1949. PM; 234 878/1949. PM; 102 010/1950. PM.

²²⁵ Decree of legal force No. 47/1950. tvr.; Departmental order of the Minister of Finance No. 6620—230/1950. PM.: »Pénzügyi bűncselekmények«.

²²⁶ Departmental orders of the Minister of Finance Nos. 6520—233/1950. PM; 12/1952. PM: »Pénzügyi kihágások, szabálytalanságok«.

²²⁷ Decrees of legal force NoNs. 3/1945. tvr.; 16/1945. tvr.; Departmental orders of the Minister of Finance Nos. 17—158/1954. PM—KüM. (together with the Minister of Foreign Trade); 10/1955. PM; 6/1956. PM.

²²⁸ Cf.: »A hatályos anyagi büntetőjogi szabályok Hivatalos Összeállítása« (Official Compilation of criminal law rules in force). Budapest, 1958. Chap. XVI, § 308/ A—J.: »Pénzügyi, vámbűntettek, szabálysértések«.

tax, revenue contraventions, financial crimes (felonies or petty offences) if the tax amount curtailed or endangered by them, — resp., in the case of violation of customs rules, the inland market value of goods serving as their object — exceeds a certain maximum (Ft 5000). Customs felony is committed by drawing away goods of the mentioned value from customs control, by giving untrue declaration about essential circumstances, by obtaining, concealing, alienating these goods or by taking part in these acts; in the case of reductions by using such goods in contrast to the conditions or by giving assistance to these acts. In all these cases the ordinary criminal law²²⁹ is to be applied with certain variances chiefly in view of confiscation and satisfaction. The procedure falls within the competence of the tribunals of district and may be initiated by the Minister of Finance, the competent Ministers, resp. the Attorney General of the People's Republic. The denunciation is to be omitted if the financial (customs) crime was committed by a worker of a state enterprise, institute or co-operation in his sphere of activity and no intentional sabotage, individual profiteering or gross negligence can be proved against him; Financial, resp. customs breaks of law are acts declared as such by legal rules and any violations of tax rules which are no financial felonies. An illegality, however, which is fined only with a percentile raising of the levied tax or with a super-tax, interest for default or defrayal of expenses, or is imposed exclusively with disciplinary penalty or fine for default, is no »break of law« in the term of the decree. In the cases of the breaks of law there proceed not the Courts but the ordinary financial authorities.

And there are also other tax rules which decree about financial crimes and pettier breaks of law,²³⁰ usually referring to the general rules mentioned above.²³¹ Special legal rules decree about crimes against the people's economy.²³²

²²⁹ Act No. 1950:II; Decree of legal force No. 39/1950.

²³⁰ Off. Compil., Loc. cit., App. I., D., § 42—53.

²³¹ Thus in the case of house-tax: Art. 30 of Order in Council No. 8790/1946. ME; Art. 19 of Order in Council No. 750/1946. ME; general income tax: Art. 42—43 of Order in Council No. 13 400/1948. Korm.; general income tax of agricultural population: Art. 21 of Decree of legal force No. 35/1955. tvr.; Decree of legal force No. 20/1957. tvr.; motor vehicles duty: Art. 3—4 of Act 1932:XXI, Art. 18 of Order in Council No. 4135/1949. Korm.; purchase tax of private persons: Art. 34 of Departmental order of the Minister of Finance No. 1/1952. PM; wine purchase tax: Art. 14 of Departmental order of the Minister of Finance No. 6453/1951. PM; Departmental order of the Minister of Finance No. 16/1955. PM; purchase tax of enterprises: Art. 37 of Departmental instruction of the Minister of Finance No. 25/1955. (PK. 7) PM. ut.; income tax of producers' co-operatives: Art. 16 of Order in Council No. 91/1951. MT; Art. 20 of Departmental instruction of the Minister of Finance No. 93/1955. (PK. 34) PM. ut.; Customs: Art. 1—5 of Order in Council No. 9/1954. MT; Decree of legal force No. 16/1954. tvr.; Art. 29 of Decree of legal force No. 7/1955. tvr.; Art. 28/1 of Departmental order of the Minister of Foreign Trade No. 1/1956. KKM; tobacco excise duty: Art. 10 of Order in Council No. 65/1951. MT; alcohol excise duty: Art. 4—7 of Order in Council No. 66/1951. MT; salt excise duty: Art. 7 of Act No. 1918:XIII; Order in Council No. 4820/1946. ME; dues: Art. 25—6 of Act No. 1936:IV; Art. 100 of Departmental order of the Minister of Finance No. 6470—52/1950. PM; Art. 1 of Departmental Order of the Minister of Finance No. 6470—63—1951. PM.

²³² Crimes against social property: Decree of legal force No. 24/1950. tvr.; crimes against the Plan: Decree of legal force No. 4/1950. tvr.; crimes against the discipline of labour: Act No. 1913:XXI, Decrees of legal force Nos. 7/1951. tvr., 25/1953. tvr., Order in Council No. 28/1952. MT; evasion of fixed prizes, crimes

2. Financial Civil Jurisdiction

1.

We have seen that by introducing the administrative jurisdiction to this country the financial competence of the ordinary civil Courts of Justice withered away gradually. And after liquidation of the administrative jurisdiction for a time there was no judicial review in these cases although such a review relating to administrative acts has never been contrary to the spirit of socialist law. *Lenin* himself gave directions in this respect in the places quoted above.²³³ Also *John Beér*²³⁴ has cited convincingly the letter to *Bebel* in which *Engels*, criticizing the Gotha Program, designated as a *sine qua non* of liberty that the civil servants could be called to account for their activities.²³⁵ At last, following the example of the U. S. S. R. and of the most People's democratic States, which consider assurance of judicial review as one of the important guarantees of socialist legality, also our legislation started on this way. The Act on general rules of the administrative procedure²³⁶ rendered possible the judicial review again. It has made this, very rightly, not by organizing special courts but by permitting contestation of administrative decisions before the ordinary Courts of Justice. The cause of ensuring judicial review has been, according to the preamble to the bill, the Government's consideration that the judicial procedure, with the increased guarantees included in it, with unconditional enforcement of the bilateral hearing (*audiatur et altera pars*),²³⁷ »with making use of legal expertise and experiences, etc. gives so effective means of protection of civil rights and legal interests that it would not be practicable to renounce them even in certain administrative cases.«

According to this law an Act, decree or order²³⁸ may allow that a decision of an administrative organ may be contested by action before a Court of Justice in the case of illegality. This cannot be considered a third instance of appeal; therefore the Court does not take over the task of the administrative organ and its restrictions are connected with this. Such a restriction is, e. g., that the judicial review can be related exclusively to judgement of committal of an illegality and so the measures made in discretionary competence have remained excluded from judicial review. And the Court may not reverse the decision only annul or affirm it. It has, therefore, no reformatory but only cassatory competence, save in some cases of social

against public supply: Order in Council No. 8800/1946. ME; crimes against the foreign exchange policy: Art. 37—66 of Decree of legal force No. 30/1950. tvr.; forgery, imitation of stamps: Art. 203, 206, 210 of Act No. 1878:V; Art. 55—58 of Act No. 1879:XL; Art. 39, 41—2 of Act No. 1908:XXXVI; Art. 2—5 of Act No. 1932:XXI; Art. 3—6 of Act No. 1933:XI; Order in Council No. 13/1953. MT. Cf.: Off. Compilation, Chap. X—XV (§ 229—301/A).

²³³ *Lenin*, I. V.: *Sotch* (Works, in Russian) XXV, 317; XXVIII, 129.

²³⁴ *Beér* 34—5.

²³⁵ *Marx—Engels* 348.

²³⁶ Art. 55—9 of Act No. 1957:IV; Enacting order No. 58/1957. tvr; Departmental order of the Minister of justice No. 11/1957. IM.

²³⁷ With which it is difficult to reconcile the legal exemption that the cases can be decided also without a hearing.

²³⁸ Decree of legal force, Order in Council.

insurance, of registers of births, marriages and deaths and of lifting an embargo.²³⁹ And at last an action may be entered only if in the administrative procedure the appeal is excluded or the right of appealing was exhausted.²⁴⁰

The restriction that the Act makes possible this remedy only against acts of *administrative organs* signifies that in our present positive law there is no judicial review not only against the decisions of the supreme organs but also against those of the local organs of *state power* (Councils). J. Beér²⁴¹ writes rightly about this solution that it cannot be considered a comforting and definitive one. The decisions of these organs of state power can be supervised, on the basis of a complaint or of an attorney's protest, only by superior organs of state power.²⁴² Also Beér's proposal to sever acts of power and those of administrative character within the activity of Councils (i. e. local organs of state power) and to permit judicial review against the latter kind of acts, on the model of acts of administrative organs, is right as well, and would mean essentially application of the method of negative enumeration.

In the course of the procedure the action can be entered in a deadline of thirty days at the administrative organ which decided in the first instance or at the district court by the party concerned or by the attorney. The rules of the Code of civil procedure²⁴³ are to be applied with amendments of the enacting decree of the Act.²⁴⁴ Judgement of action falls within the competence of district (town) courts. Territorially there are authorized in Budapest exclusively the court of the fifth district, elsewhere the district (town) courts functioning on the residence of county Courts. The territorial competence is determined by the residence of the administrative organ which proceeds in the first instance.²⁴⁵ The validity of judgement (*res iudicata*) is ensured by two dispositions of the Act: In cases decided by a Court on the merits there is no room for a new procedure if the state of affairs has remained unchanged (*ne bis in idem*); and the administrative organ is obliged by the judgement, therefore it has to proceed and pass a decision according to it.²⁴⁶ Appealing against a judgement, the attorney's protest for legality and rescision of a judgement is not restricted by the Act.

To bring the administrative disputes in the competence of the courts of common pleas, instead of bringing them in that of special courts of questionable value or in that of an unquestionably wrong administrative (ministerial) jurisdiction (*Ministre juge*), is a right and progressive idea. This cannot be said about revival of the archaic method of exhaustive enumeration of content of judicial competence instead of ensuring a general competence. This method has worked well nowhere and never. Its revival can be explained as the hesitation of first steps. This Act is a bold initiative and it starts, just for this reason, on a way which had been closed in this country since a century and in several countries of the Continent since a century and a half, and on which in this part of the Continent the Soviet law of administrative procedure

²³⁹ Art. 21 of Decree of legal force No. 39/1955. tvr.; Art. 57/3 of Act No. 1957:IV.

²⁴⁰ Art. 55 of Act No. 1957:IV.

²⁴¹ Beér 27.

²⁴² Art. 1 of Decree of legal force No. 13/1953; Art. 64—66 of Act No. 1957:IV.

²⁴³ Acts Nos. 1952:III, 1954:VI.

²⁴⁴ Decree of legal force No. 58/1957. tvr.

²⁴⁵ Art. 56 of Act No. 1957:IV; Art. 5 of Decree of legal force No. 58/1957. tvr.

²⁴⁶ Art. 59 of Act No. 1957:IV.

pushed first its way by the revolutionary introduction of the procedure of courts of common pleas and of attorney's protests.²⁴⁷ And the original fault of the method of enumeration is mitigated by making possible to extend the content of enumeration by Acts and even by decrees. The five points with which the Act has started²⁴⁸ are certainly established in an extremely narrow range, and only two of them concern the financial law. These are the decisions which decline to vacate assets attached in the course of administrative procedures; and the contestableness of the part of a decision, establishing tax and duty liabilities, which disposes of the legal ground of assessment. This restriction does not mean, however, that judicial review is allowed only in questions of law and not in questions of facts. The problem of the ground of tax and duty obligations is namely in general a question of facts.²⁴⁹ And the rigidity of enumeration is mitigated also by the provision²⁵⁰ that this Act does not concern the special dispositions which render possible to suit against some administrative decisions before Courts of Justice. This is true also for the disposition of this Act according to which at least an Order in Council will be necessary to permit judicial review in a case in the future. I. e., the judicial review will remain untouched also if it had been allowed by a ministerial order or instruction or by a Council injunction before this Act came into force.

Also Ladislaus Névai²⁵¹ and John Beér²⁵² would not be averse to determine judicial competence in administrative affairs, *de lege ferenda*, with a general clause. They would except, however, procedure of the legislative body, that of the Presidium of the People's Republic and governmental acts of Government. Such a negative enumeration restricting the general competence is, in principle, right and applied also by other legal systems. The French *Conseil d'État*, e. g., may not judge over legislative and judicial acts by passing judgement on *recours pour excès de pouvoir*,²⁵³ the acts of Government (reason of State), however, cannot be taken off from it. It has judged, e. g., in cases of internment about legality of motives.²⁵⁴ Recently also some discretionary cases²⁵⁵ which were excluded so far, has got into its competence, e. g., expulsion of foreigners or non-granting of passports.²⁵⁶ In the United States the acts of Government and the discretionary cases are excluded of judicial review.²⁵⁷

²⁴⁷ Cf.: Szabó: *Demokrácia*, 110—2.

²⁴⁸ Art. 57/1a—e of Act No. 1957:IV.

²⁴⁹ Cf.: Beér 28.

²⁵⁰ Art. 57/4 of Act No. 1957:IV.

²⁵¹ Névai 3—8.

²⁵² Beér 25—37.

²⁵³ Ordonnance 31. XII. 1945.

²⁵⁴ Ordonnance 4. X. 1944.

²⁵⁵ *Cas matériellement inexacts, cas d'ouverture*.

²⁵⁶ Cf.: Langrod: Council of State, 673, 687—692; Letourneur—Hamson 260.

²⁵⁷ Langrod: *Contrôle* 235—6; Jaffe 775; Peck 55.

2.

Among financial disputes, remitted to procedure of courts of common pleas by special legal rules, cases of *social insurance* have an eminent significance. In these cases judicial review in this country was ensured very early. This is connected also with the fact that before the nationalization of enterprises and, in connection with this, insertion of expenses and incomes of social insurance into the state budget, this legal area was not a part of financial law but that of civil law. Thus the forces which hindered the development of jurisdiction in public law had no effect against it. The Act No. 1907: XIX on health and accident insurances of employees the between the insured persons and the sick-relief fund.²⁵⁸ According to the Act No. 1907: XIX on health and accident insurances of employees the authority in control of trade²⁵⁹ decided the disputes which arose partly between employees and employers as to sick-relief contributions and membership card dues, partly between the funds and employers as to compensation duties and insurance charges. But the party which was not satisfied with the decision of the authority could assert its claims before the ordinary Courts of Justice in fifteen days. For deciding the disputes between the insured and the fund, concerning sick-relief and accident damages, courts of arbitration were organized; their Presidents and their deputies were appointed by the Minister of Justice from judges for three years, and their assessors were elected »at par« by employees and employers. Appeal was allowed to the State Workmen's Insurance Office.²⁶⁰ Act No. 1921: XXXI on workmen's insurance jurisdiction brought these cases in the first instance before district courts on residences of the district workmen's insurance funds (workmen's insurance courts) and in Budapest it organized a special workmen's insurance court with a member of the Supreme Court as President. Court of appeal was the Workmen's Insurance High Court. Its President was the President of the Court of Appeal, its judges the judges of this Court. The assessors were elected at par from employee and employer members of the funds. In the High Court the assessors were appointed by the President from the elected.²⁶¹ Act No. 1932:IV on social insurance jurisdiction brought the jurisdiction in social insurance courts thoroughly within competence of the courts of common pleas. Henceforth in these cases the central district court at Budapest and the district courts authorized by the Minister of Justice proceeded and in second and last instance the Court of Appeal at Budapest. Assessors in the district courts participated only in enumerated cases. The social insurance relations were founded upon several Acts.²⁶² In a few exceptional cases there proceeded immediately the Court of Appeal at Budapest, in others the Central District Court at Budapest with exclusive competence. In other social insurance processes, however, the general rules of civil action were in force concerning territorial competence of social insurance courts in the first instance. The Court of Appeal at Budapest passed decisions for unity of the

²⁵⁸ Art. 76 of Act No. 1891:XIV.

²⁵⁹ Art. 176 of Act No. 1884:XVII.

²⁶⁰ Art. 156—182 of Act No. 1907:XIX: »Állami Munkásbiztosító Hivatal«.

²⁶¹ Art. 1—8, 17—19 of Act No. 1921:XXXI.

²⁶² Acts Nos. 1925:XXXIV, 1927:XXI, 1928:XL.

law about questions of principle of social insurance which obliged each lower court.²⁶³

Essential change was brought by a decree²⁶⁴ which incorporated, after nationalizations, the new social insurance from the area of civil law in that of financial law and entrusted it to the Trade Unions. Since then its central guiding organ has been the Trade Union Social Insurance Centre²⁶⁵ supervised by the Central Council of Hungarian Trade Unions,²⁶⁶ its local organs being its sub-centres and agencies. According to the enacting order of this Act²⁶⁷ the procedure and organs of appeal in cases relating to health insurance provisions are determined by a Statute of the Central Council of Trade Unions. Against decisions of these organs there was no appeal more to the Courts. In that time there was no lawsuit also in disputes arising from social insurance relations between the Trade Union Social Insurance Centre and the public institutions having for subject social insurance contributions or claims for compensation.²⁶⁸ In pursuance of a recent decree,²⁶⁹ regulating the social insurance, the Trade Unions have continued proceeding in disputes between insured and insuring organs about insurance provisions. To enter an action to Courts of Justice against their decisions is, in general, not allowed. The statement of a medical referee committee supervising the inability to one's living is definitive. But the parties may exceptionally bring an action to the district court of residence of the insurance organ, namely: the insured in cases determined by the Government in which he was obliged to pay for damages caused by illegal enjoyment of health insurance provisions; the employer against the order for payment issued against him; both the employer and the insured against the decision relating to the existence of the health insurance relations.²⁷⁰

The decree on the unified social insurance pension of workers and its amendment²⁷¹ superseded the former rules on the obligatory old-age, accident, invalid, widowhood, orphanhood, miner's pension insurance and those on pension of civil servants, of State Railway and Post employees; it provided, however, for no remedies. Only the decree regulating this question again,²⁷² charged the Government to determine the rules of proceeding and the organs being competent to hear the appeals. By reason of this authorization the order of execution²⁷³ at last regulated this important problem again but only concerning the claims for pensions asserted on the basis of the new legal rules. According to this, there is room for an appeal against the decision in the first instance of the sub-centre (agency) of the Trade Union Social

²⁶³ Art. 2—4, 9—11, 42 of Act No. 1932/IV.

²⁶⁴ Art. 1, 3 of Decree of legal force No. 36/1950. tvr.

²⁶⁵ »Szakszervezeti Társadalombiztosítási Központ« = Sz. T. K.

²⁶⁶ »Szakszervezetek Országos Tanácsa«.

²⁶⁷ Art. 12/1 of Order in Council No. 238/1950. MT.

²⁶⁸ Art. 1 of Departmental order of the Minister of Justice No. 2070/1950. IM.

²⁶⁹ Decree of legal force No. 30/1955. tvr.; Enacting order No. 71/1955. MT.

²⁷⁰ Art. 28—30 of Decree of legal force No. 39/1955. tvr.; Art. 108—9 of Order in Council No. 71/1955. MT.

²⁷¹ Art. 40 of Decree of legal force No. 30/1951. tvr.; Decree of legal force No. 8/1954. tvr.

²⁷² Art. 35 of Decree of legal force No. 28/1954. tvr.; Enacting order No. 69/1954. MT.

²⁷³ Art. 67—72 of Order in Council No. 65/1954. MT.

Insurance Centre and that of the National Pension Institute to the social insurance committee, competent according to the claimant's domicile, in fifteen days. Against the decision in second instance the claimant may enter an action to the domicile's district (town, fifth district of the Capital) court, in sixty days. But one may turn to the Court of Justice only in view of legality of the claim and the claim for compensation. There cannot be entered any action in the question of the numerical amount of pensions, of existence of infirmity or of functional disease; of degree of infirmity, resp. of decline of working capacity; or against decisions deciding about pension claims based on legal rules which became invalid as this order had come into operation. In the case of claims based on an injury during employment, resp. on a functional disease there is a room for an action to the Court exclusively in the question whether there happened an injury during employment, resp. whether there is room for a compensation on the base of a functional disease. In the question what a decrease in working capacity has been caused, there is no action to a Court. In cases of mutual pension insurance of the members of farmer's co-operatives²⁷⁴ the claimant may bring an action against the committee's decision in the second instance to the district court functioning on the residence of the local sub-centre of the Trade Union Social Insurance Centre registering the claim for pension, and in Budapest to the Centre District Court, in sixty days. But there is no lawsuit in the question of amount of pensions, of existence of infirmity, of measure of decrease of working capacity, of existence of a claim for bonus of nursing.

A further important kind of cases in which, in connection with financial legal institutes, special legal rules have assured a civil lawsuit, is the so-called *possessory suit* in which one may enforce the property rights against movable properties sequestrated by a writ of execution.²⁷⁵ This action may be rendered in fifteen days, to the district (town) court of the place of attachment. If starting of this procedure was brought to the knowledge of the competent village tax group (finance guards) and verified, it has a delaying force on the execution.

Also in cases of damages by *expropriation* the judicial review is ensured.²⁷⁶

3.

In legal systems in which the institution of administrative jurisdiction is unknown or exceptional, like in the ancient Roman and present Anglo-Saxon laws, the judicial review of administrative acts is the general rule. In Rome the civil servants generally were subordinated to the ordinary tribunals, at least after expiration of their mandates. *Th. Mommsen* wrote that they did not know »the terrible institution of an exceptional political control

²⁷⁴ Decree of legal force No. 65/1957. tvr.; Art. 48 of Order in Council No. 21/1958. Korm.

²⁷⁵ Art. 25 of Order in Council No. 57/1957. Korm.; Art. 76—78 of Departmental order of the Minister of Finance No. 32/1957. PM.

²⁷⁶ Decree of legal force No. 23/1955. tvr.; Order in Council No. 56/1955. MT. Cf.: Mrs. Ferróné 167—9.

body.²⁷⁷ *M. T. Cicero*,²⁷⁸ however, regrets the absence of such a body and suggests to oblige each retiring magistrate to render account before the Censor about his functioning. But he considered the condemnatory sentence of the Censor only a proposal and the case fell, according to him, within the competence of the ordinary *Quaestio* procedure. In Rome there was only one magistrature irresponsible and thus free from any supervision concerning his actions: the Censor. His function was, namely, considered — like in later European laws that of the jurors — to be based exclusively on internal conviction, needing no legal motivation.

The English legal theory deduces equality before law from the theorem of the *rule of law*. And from equality they deduce the general competence of the ordinary Courts.²⁷⁹ Therefore it is unimaginable, at least according to *A. V. Dicey*,²⁸⁰ to have in the English law such a notion like the French »*droit administratif*« of which also the German »*Verwaltungsgerichte*« have emerged later being transplanted also into the law of this country. For the term »*droit administratif*« the English language has had not even an equivalent. Its literal translation (administrative law) is unfamiliar and vague and only the most recent legal terminology has tried to give it a European interpretation. In the United States a judicial review of administrative acts came into being also by the writs of ordinary federal Courts of Justice. In recent times, however, there are signs showing that some administrative jurisdiction, a quasi-judicial review has developed also there.²⁸¹ Some cases remained excluded from judicial review by the practice of the Courts (inherently administrative decisions). Such are, e. g., the acts of Government (in political and foreign affairs) and the acts of discretionary competence which in liberal States, in contradiction to the socialist ones, do not enjoy, in general, a judicial review (*actes d'opportunité*). In the United States several disputes are considered belonging to this category in tax cases concerning questions of facts in which there proceed not the ordinary Courts of Justice but special Tax Courts have a quasi-judicial review.²⁸² In the fourth decade of this century the judicial review by ordinary courts was generally in decline. Thus in New York the traditional remedies (certiorary, mandamus, prohibition)²⁸³ and later even the mandamus before federal Courts were suppressed.²⁸⁴ The Administrative Procedure Act (1946), however, restituted all the traditional writs. And the development of judicial review in the administrative cases is at present in progress again.²⁸⁵ This hesitation in

²⁷⁷ Mommsen I, 698: »Die allgemeine politische Befähigung der Römer hat sich in Betreff der magistratischen Verantwortlichkeit vor allem darin offenbart, dass sie im Allgemeinen den Beamten keine Ausnahmestellung, weder eine erschwerte, noch eine befreite gegeben haben.«

²⁷⁸ Cicero, *M. T.*: De leg. 3, 20, 47.

²⁷⁹ Cf.: Jaffe—Henderson 345.

²⁸⁰ Dicey 191—2.

²⁸¹ A. P. A. = Federal Administrative Procedure Act, Public Law 404, 79th Congress, 60 Stat. 234. 2d Session, 11. 1946; 5 U. S. C. §. 1009 (1952): Administrative Courts.

²⁸² Langrod: Contrôle, 235—6.

²⁸³ N. Y. Civ. Proc. Act, 1937, Art. 78.

²⁸⁴ Federal Rules of Civil Procedure, 1938, rule 81/b.

²⁸⁵ Carrow 1.

recent American practice is exposed by *L. L. Jaffe*²⁸⁶ who has described that the judicial review there at the beginning of the New Deal seemed to become out of date but at present it is invigorated again.

III. CONSTITUTIONAL CONTROL OF FINANCIAL LAW

The control on highest level is exercised in the area of financial law, as well as in the whole domain of public life, by the supreme organ of state power in the Hungarian People's Republic, the *Parliament*. It exercises every right derived from the people's sovereignty, determines organization, direction and conditions of Government. In this competence there are three points which immediately concern the field of financial law. These are legislation, determination and control of state budget and that of the Plan of people's economy.²⁸⁷

An act of control is, first of all, the right of Parliament to delegate from its members committees for researching any problems, if need arises. The authorities, offices and institutes as well as any citizens of the State are obliged to make available data for the parliamentary committees, resp. give evidence before them.²⁸⁸ As known, the Parliament of the United Kingdom has similar privileges which have served as models for the continental legislations.²⁸⁹

Parliamentary supervision of Appropriation Accounts is by our Constitution of People's Republic not prescribed, in contrary to the Constitution of the U. S. S. R.²⁹⁰ and to those of the most People's Democracies.²⁹¹ But both our old laws²⁹² and recent decrees²⁹³ prescribe it. Our legislative body is, therefore, authorized to exercise also this kind of supervision.

In this sense Decision No. 1 of the Parliament has ordered in 1956 that the democratic principles of our Constitution must be used in greater extent than before to let the constructive activity of our working people develop. Therefore this decision has decreed that every fundamental question concerning the collectivity of the working people must be regulated by Acts and the legal rules relating to fundamental duties and human rights of the citizens must be created in form of Acts (II/1). This means in the domain of financial law that Parliament wants to control the rules which prescribe both obligatory and unsolicited rates and taxes for citizens. This *de lege ferenda* (and even *de lege lata*) contains competence of Parliament to enact the rules of tax, to ratify international treaties and to determine and supervise the Appropriation Accounts.

²⁸⁶ Jaffe 403.

²⁸⁷ Art. 10/3a—e of Act No. 1949:XX.

²⁸⁸ Art. 17 of Act No. 1949:XX.

²⁸⁹ Dicey 54.

²⁹⁰ 1936, Art. 14.

²⁹¹ DDR 1949, Art. 122; Tchecho-Slovak 1948, Art. 62; Rumanian 1954, Art. 24f; Bulgarian 1947, Art. 17/7; Chinese 1954, Art. 27/10; Mongolian 1942, Art. 23, 79; etc. Exceptions are, besides the Hungarian Constitution (1949), the Albanian (1946), Vietnamese (1946) and Korean (1948) ones.

²⁹² Art. 22 of Act No. 1870:XVIII; Art. 23—5 of Act No. 1880:LXVI.

²⁹³ Art. 4 of Decree of legal force No. 26/1953. tvr.; Art. 1 of Decree of legal force No. 2/1956. tvr.

Parliament has prescribed in this decision, as a further directive, to enlarge the circle of its directing and supervisory activity; to put on its agenda the problems of national importance the arrangement of which is decisive for our economic, political and cultural life and development. Both Presidium of the People's Republic and Government have systematically to render account to Parliament. Thus there is made possible for the delegates of people to contribute, in the course of constructive deliberations, to determine the right directives for Government. A task of Parliament is, resulting from the Constitution — the Decision continues — to guarantee in the supreme instance conservation of socialist legality. The constitutional disposition according to which both President of the Supreme Court and the Attorney General have to render accounts about their activities to Parliament, at least once a year, must prevail. A special care must be brought to the requirements of socialist legality in the course of the supervision of administrative organs and at discussions of their accounts (II/2—4).

These deliberations have taken place, since then, in due order. But Parliament has scheduled, over and above that, also amelioration of its working methods. It has ordered to convoke its sessions more often than before and to determine terms of its sessions so that due opportunity should occur to multilateral deliberation of reasonable tasks, and for the representatives to make their motions, and exercise their right of interpellation. In points of agenda preliminary steps should be taken. For every bill a detailed written preamble should be prepared. And especially the work of committees of Parliament should be reorganized, their number should be increased and their activity also between the times of sessions must be made possible (III/1—3). For increasing the supervision the decision has demanded a closer connection between representatives and electors. It has prescribed the making of accounts, to have consulting hours, to co-operate with state and social organs of working people to promote with all these the consolidation of socialist legality and state discipline (IV/1—4). And therefore it has prescribed to define duly sphere of activity of Parliament and that of Presidium and Government ((V/1).

Parliament needs, to perform this complicated control activity, assistance and succour of specialists. In the domain of financial law its most important assistant had been, in our old law, the *Supreme State Court of Accounts*.²⁹⁴ This was an organ independent from Government and with an original competence. It was headed by a President of ministerial rank to be able to supervise the Ministries themselves. Its character was, in consequence of its competence of control and of independence of its members and above all of its President, functioning as individual organ, more judicial than ministerial, on the model of several similar foreign institutions.²⁹⁵ It supervised state expenses and incomes, administration of state estate and public debts and, in general, public accountancy. Incompatibility of its members was regulated strictly. Its President was appointed for life by the Head of State from three persons designated by Parliament on initiative of the House of Representatives. His impeachment could be ordered only by the House of

²⁹⁴ Acts Nos. 1870: XVIII, 1880: LXVI, 1897: XX, 1907: XXIII, 1914: IV, XXIII: „Legfőbb Állami Számvevőszék“.

²⁹⁵ Cour des Comptes, Corte dei Conti, Tribunal de Cuentad, Rechnungshof, etc.

Representatives with general majority of votes and he could be convicted only in criminal proceedings of constitutional law established for Ministers.²⁹⁶

The position of the President of our had been Court of Accounts paralleled essentially that of the British Comptroller and Auditor General. Also this is independent of Government and may not be member of any Houses. Also he is irremovable and can be dismissed only on proposition of both Houses of Parliament.²⁹⁷ He presents his accounts through a Public Accounts Committee, delegated by the House of Commons, to the House. In Austrian law besides the Federal Court of Accounts²⁹⁸ also the member States (Länder) have their own Courts. These are assistants of *Nationalrat*, resp. of the *Landrats* just as independent of Government as our Court of Accounts was.

In our law each Ministry was obliged to send the Court of Accounts its own accountants and the accountants of its subordinated organs monthly. And the Court was entitled to supervise any other documents at any time. It could ask for informations and informed the Council of Ministers of its observations. About the results of its supervision it made a statement quarterly. Its most important task was to prepare the Appropriation Accounts. It presented this with observations of the Prime Minister and with relating decisions of the Council of Ministers to Parliament without delay. Together with this it presented to Parliament the balance of state estate with its report and with observations of the Council of Ministers. The Act²⁹⁹ prescribed also the detailed content of Appropriation Accounts which had to contain the following points: 1st, a synoptic statement of possible unestimated costs arranged in the system of the Appropriation Act, under the correspondent heads and chapters; 2nd, the statement of transit items under chapters of extraneous moneys, granted and contracted loans, supplies, appropriation funds, conversions; 3rd, state inventory under chapters of real estate, products, materials, tools and means, surplus stocks, national debts and claims, active and passive arrears; 4th, a balance under chapters cash, income, and estate balances; 5th, details for enlightening the parts 1—3 of Appropriation Accounts. The Act prescribed also the content of the synoptic statement. On accounts of detailed items the result of administration was to be demonstrated from item to item. The Court presented to Parliament in its annual detailed report the motivation of Ministers about the unfavourable differences between expenses and incomes prescribed in the Appropriation and Finance Acts and the actual remittances, with observations of the Court itself. Detailed prescriptions regulated supervision of funded and unfunded debts and of mintage especially for impeding that these overstep the legally prescribed accounts. The competence of the Court was later extended also to supervision of the Postal Savings Bank.³⁰⁰ The Ministers were authorized to issue their orders and instructions concerning management of

²⁹⁶ Art. 34 of Act No. 1848:III.

²⁹⁷ Dicey 290—5; The Exchequer and Audit Department's Act, 1866, 29 & 30 Vict. c. 29, sec. 3.

²⁹⁸ Rechnungshof: Art. 121—8 B—VG., Rechnungshofgesetz v. 12. VI. 1948. BGBI. 144; Art. 5—6. VEG (1925), Vdg. BGBI. 161. v. 1926. Cf.: Melichar 176 ff., Adamovich 356—62. Also in Switzerland, in Canton Zurich, the role of a similar organ (Staatsrechnungsprüfungskommission) is recently increasing; cf.: Schaumann 7.

²⁹⁹ Art. 25—7 of Act No. 1880:LXVI.

³⁰⁰ Art. 30 of Act No. 1885:IX.

money and estate, accountancy and supervision only with preliminary consent of the President of the Court of Accounts.³⁰¹

Our new law has liquidated the Court.³⁰² The new organs which have taken over the control tasks are not parliamentary organs co-ordinated to Government, but organs of Government. Therefore we have treated their status not here but within the framework of the administrative control. From point of view of constitutional law chiefly their control task relating to Appropriation Accounts is important. These tasks are concisely determined in the legal rules relating to them.³⁰³ Being, however, organs of Government, they prepare their reports for this and not immediately for Parliament. Therefore also this function of them falls within the framework of administrative supervision.

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ФОРМИРОВАНИЕ КОНТРОЛЬНОЙ СИСТЕМЫ ВЕНГЕРСКОГО ФИНАНСОВОГО ПРАВА

(Резюме)

Контроль является государственно-административным, судебным и конституционно-правовым. Государственно-административный контроль является органическим (внешним и внутренним) и функциональным. Децентрализованными органами внешнего органического контроля в течение долгого времени наряду с органами, ведущими хозяйство, были счетоводства (закон XX 1897 года); Подчинены не контролируемому ими органу, а спецминистерству, более того позднее только министру финансов (закон XXVIII 1920 года); но при реорганизации учета были ликвидированы (указ 2/1950). Центральным внешним контрольным органом стала Центральная комиссия народного контроля (закон VII 1957 года), которая вступила вместо временно существовавшего Управления государственного контроля (1948), а затем Министерства государственного контроля (1955). Имеются также и местные органы и весь орган работает под руководством правительства. Но в контроле участвуют также и другие центральные органы государства, в особенности Президиум ВНР, правительство и в первую очередь Министр Финансов вместе с подчиненными ему банками и финансовыми органами. Местными органами финансового контроля сегодня являются финотделы исполнительных комитетов местных советов, вступившие вместо бывших финансовых управлений, налоговых инспектов, налоговых управлений и управлений по начислению сборов. В противоположность этому в рамках местных советов еще и сегодня не находится Центральное налоговое управление для выполнения учета общественных задолженностей государственных предприятий. Оно и фининспекция работают под надзором министра финансов, а таможенные органы под руководством министра внешней торговли. Финансовый контроль осуществляет также Государственная прокуратура (§ 61 закона IV 1957 года). И все в большей мере развертываются также органы внутреннего контроля: бюджетные и контрольные органы ведомств и предприятий (указ 2/1950) и контрольная деятельность начальников, директоров и главных бухгалтеров. Функциональный государственно-административный контроль состоит в предоставляемом всем народном контроле (книги жалоб, заявления, преследующие охрану общественных интересов, подаваемые в

³⁰¹ Art. 142/1 of Act 1897:XX.

³⁰² Art. 24 of Decree of legal force No. 17/1949. tvr.

³⁰³ Art. 21 of Decree of legal force No. 17/1949. tvr.; Art. 2 of Act No. 1952:II; Art. 3 of Decree of legal force No. 28/1955. tvr.; Art. 3 of Order in Council No. 6/1958. Korm.

органы народного контроля: § 3—23 закона VII 1957 года); отчасти в обычных жалобах (закон IV 1957 года и постановление правительства 57/1957).

Судебный контроль по линии финансового права в течение долгого времени осуществлял организованный по образцу фервальтунгсгерихтов, в первой инстанции, имевшей узкую компетенцию Верховный Суд по делам, связанным с государственным управлением (закон XXVI 1896 года). (Детали см. И. Сабо) «Демократия и государственно-правовое судопроизводство». Будапешт, 1946). После его ликвидации (закон II 1949 года) временно работали административные арбитражи. Обычные суды в течение долгого времени имели компетенцию только по финансовым и таможенным преступлениям (постановление министра финансов 18.400/1928). Они были демократизированы новыми правилами (указы 3/1954, 16/1954). Гражданские суды в старом праве до 1948 года разбирали также отдельные финансово-правовые споры. Сегодня в отдельных перечисленных налоговых делах § 55—9 закона IV 1957 года снова дают им компетенцию. Судебный контроль над правовыми спорами по общему страхованию после многих старых законов (закон XIV 1801 года и закон IV 1932 года и т. д.) обеспечивается также новыми постановлениями (постановление Совета Министров 65/1954, указы 39/1955, 65/1957).

Конституционно-правовой контроль осуществляется Государственным собранием. Он же осуществляет контроль итоговых расчетов, но не на основании Конституции Народной Республики (закон XX 1949 года), а на основании старых законов и новых постановлений (указы 26/1953, 2/1956). Вспомогательным органом парламентского контроля в течение долгого времени был независимый от правительства Верховный государственный финансовый контроль (закон XVIII 1870 года), с компетенцией подобной австрийскому Рехнунгсгофу и французскому Кур де Компт. После ликвидации (указ 17/1949) на его место вступили известные административные органы контроля.

